

No. 17318

United States
Court of Appeals
for the Ninth Circuit

JOE GOLDSTEIN and LILLIAN GOLDSTEIN,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the
Tax Court of the United States

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Tax Court of the United States

Docket No. 71831

JOE GOLDSTEIN AND LILLIAN GOLDSTEIN,
 Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
 Respondent.

Appearances

Walter M. Campbell, Esq., 403 Subway Terminal
 Bldg., 417 South Hill Street, Los Angeles 13,
 California.

GENERAL DOCKET

1958

Feb. 5—Petition filed. Fee paid 2/5/58. Served Feb.
 6, 1958.

Feb. 5—Request by petr. for trial at Los Angeles,
 Calif. Action Granted 2/6/58. Served Feb. 6.

April 1,—Answer by resp. filed. Served April 2.

1959

Nov. 9—Notice of trial at Los Angeles, Calif. Jan. 18,
 1960. Served Nov. 9.

Jan. 21—Trial before Judge Drennen—Los Angeles,
 Calif. Stip. of facts w/joint exhibits 1-A thru
 4-D. Petitioners Brief due March 8, 1960. Re-
 spondents Brief due April 7, 1960. Petitioners
 Reply Brief due April 22, 1960. Submitted to
 Judge Drennen.

- Under Submission
- 1960
- Feb. 23—Transcript of Hearing 1/21, 1/22, 1960 filed. Served Mar. 8.
- March 7—Brief for Petr. filed. Served March 8.
- April 6—Motion by resp. for extension of time to April 14 to file Brief in Answer. Granted Apr. 7. Served Apr. 8.
- April 14—Resp. Brief in Answer filed (6). Served April 15.
- April 27—Motion by petr. for extension of time to May 9 in which to file Answering Brief. Granted 4/27/60. Served Apr. 28.
- May 9—Reply Brief for Petr. filed (4). Served May 9.
Submitted to Judge Drennen
- Dec. 27—Memo Findings of Fact and Opinion filed Judge Drennen. Decision will be entered for the Respondent. Dec. 27.
Respondent. Served. Dec. 27.
- Dec. 27—Decision entered, Judge Drennen. Dec. 27.
- Appellate Proceedings
- 1961
- Jan. 19—Petition for Review by U. S. C. A. 9th Cir. filed by petrs.
- Jan. 19—Notice of Filing Pet. for Review with proof of Service of attachments thereto filed.
- Jan. 19—Designation of Contents of Record on Review filed by petrs.
- Jan. 19—Proof of Service of Designation of Contents of Record filed.
- Feb. 20—Order enlarging time to file record on review and docket pet. for review to April 19, 1961. Served Feb. 20.

Tax Court of the United States

Docket No. 71831

JOE GOLDSTEIN and LILLIAN GOLDSTEIN,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioners hereby petition for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency (Ap:LA:AA-HT 90D:JMC,) dated January 9th, 1958, and as a basis thereof allege as follows:

1. Petitioners are now, and have been at all pertinent times, husband and wife, residing at 85 Fremont Place, Los Angeles 5, California.

2. The return for the period here involved was filed with the District Director of Internal Revenue for the Los Angeles District.

3. The notice of deficiency, a copy of which is attached and marked "Exhibit A," was mailed to petitioners on or about January 9th, 1958.

4. The deficiencies as determined by the Commissioner are in income taxes for the taxable year ended December 31st, 1953, as follows:

Nature of Tax: Income Tax;

Deficiency Determined: \$28,404.13.

5. The determination of tax set forth in said notice of deficiency is based upon the following errors:

A. The Commissioner has erroneously determined that petitioners received dividends not reported by them in the amount of \$40,000.00;

B. The Commissioner has erroneously disallowed a deduction for medical expenses in the amount of \$1,859.53.

6. The facts upon which petitioners rely as a basis for this proceeding are as follows:

A. In the notice of deficiency the respondent informed petitioners that:

“It is determined that \$40,000.00 of the amount of \$75,000.00 received by you in the year 1953 as the sales price of a parcel of real property ‘sold’ to the Boy’s Market, Inc., constitutes the distribution of a dividend, taxable as ordinary income under the provisions of Section 22 of the Internal Revenue Code of 1939.”

Petitioners allege that the \$40,000.00 referred to above was, in fact, a capital gain realized upon the sale of a nondepreciable asset, to-wit, land, to the said The Boy’s Market, Inc., a corporation; and that said amount was not a dividend. Petitioners allege in support thereof the following:

(1) That on or about the 27th day of September, 1945, The Boy’s Market, a limited copartnership consisting of the petitioner Joe Goldstein, as general partner, and Edward Goldstein and Joe Goldstein, as trustee for Max Goldstein, limited partners, leased a certain parcel of land situate in the City of San Gabriel, State

of California, from one Torley Land Company, a corporation, for a term of 50 years from and after the 1st day of November, 1945, upon consideration of the erection of a building of certain specifications and value upon said premises, the payment of annual rent as reserved in said lease, and the keeping of other terms and conditions as provided for therein. That thereafter, and on or about January 1st, 1946, the said lease was assigned to The Boy's Market, Inc., a corporation, which assumed the obligations therein set forth. That under and by virtue of the terms of said lease, petitioner Joe Goldstein remained personally liable to the Lessor, Torley Land Company, or its assigns, for the performance of the terms of said lease.

(2) That during the calendar year 1953 and at all pertinent times, petitioner herein, either directly or as trustees for their minor children, owned 52.8% of the issued capital stock of said The Boy's Market, Inc., a corporation.

(3) That on or about June 22nd, 1953, petitioners and the said Torley Land Company, a corporation, entered into a contract wherein the said Torley Land Company agreed to sell, and petitioners agreed to buy, the said land in the City of San Gabriel, California, referred to above, subject to the lease aforesaid, in consideration of the petitioners' equity in an apartment building to be constructed in the City of Las Vegas, Nevada; that petitioners did thereafter acquire land and construct the said apartment building in Las Vegas at a total cost of \$35,000.00, which said land and apartment building were thereafter conveyed to the said Torley Land Company; and on or about De-

ember 8th, 1953, the said land in the City of San Gabriel, State of California, was conveyed to petitioners, as joint tenants, subject to the matters set forth in a policy of title insurance issued by Title Insurance & Trust Company on December 8th, 1953, a copy of which is attached hereto and marked "Exhibit B."

(4) That thereafter, and on or about the 31st day of December, 1953, petitioners sold said real property to The Boy's Market, Inc., a corporation, for a total consideration of \$75,000.00, which said amount was not more than its fair market value at the date of its acquisition by petitioners and at the date of said sale to The Boy's Market, Inc.

(5) That the officers, directors, and stockholders of said The Boy's Market, Inc., a corporation, were at all times acquainted with, and in possession of, all information relative to the property involved, including the details of the acquisition thereof by petitioners, and undertook the said transaction independently and not as the result of any dominion, control, pressure, or influence brought to bear by these petitioners, or either of them, and to the advantage of said corporation, and for the business purposes thereof.

B. That the adjustment to medical expenses as proposed by the Commissioner is brought about as a result of the increase in adjusted gross income by the Commissioner's proposed treatment of Item A, above, and by reason of the facts, as stated above, is not justified. That the amount of medical deduction claimed on the income tax return of petitioners was correctly set forth thereon.

Wherefore, petitioners pray that the Tax Court may hear these proceedings, and:

1. That the Court determine that there is no deficiency in the income tax liability of petitioners for the taxable year ended December 31st, 1953; and
2. That the Court grant such other relief as may be proper.

Respectfully submitted,

/s/ WALTER M. CAMPBELL,
Counsel for Petitioners.

Duly verified.

Form 1230 (App.)

(Seal)

EXHIBIT A

U. S. Treasury Department
Internal Revenue Service
Regional Commissioner
1250 Subway Terminal Building
417 South Hill Street
Los Angeles 13, California

Replying Refer to
Ap:LA:AA-HT
90D:JMC

Mr. Joe Goldstein and
Mrs. Lillian Goldstein
Husband and Wife
85 Fremont Place
Los Angeles 5, California

Jan 9 1958

Dear Mr. and Mrs. Goldstein:

You are advised that the determination of your income tax liability for the taxable year(s) ended De-

ember 31, 1953, discloses a deficiency or deficiencies of \$28,404.13, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with the Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, 417 South Hill Street, Los Angeles 13, California. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is the earlier.

Very truly yours,

RUSSELL C. HARRINGTON

Commissioner,

/s/ By H. L. DUCKER

Enclosures :

Statement

Form IRS Pub. No. 160

Agreement Form

Associate Chief, Appellate Division

RCSF 901567

Ap:LA:AA-HT

90D:JMC

Statement

Mr. Joe Goldstein and

Mrs. Lillian Goldstein

Husband and Wife

85 Fremont Place

Los Angeles 5, California

Tax Liability for the Taxable Year Ended

December 31, 1953

Year		Deficiency
1953	Income Tax	\$28,404.13

In making this determination of your income tax liability, careful consideration has been given to the report of examination, a copy of which was forwarded to you on February 25, 1957, to your protest dated March 26, 1957, and to the statements made at a conference held on October 2, 1957.

A copy of this letter and statement has been mailed to your representative, Mr. Walter M. Campbell, 417 South Hill Street, Suite 403, Los Angeles 13, California, in accordance with the authority contained in the power of attorney executed by you.

Adjustments To Net Income
Year 1953

Net income as disclosed by return	\$45,852.73
Additional income and unallowable deductions:	
(a) Dividends	\$40,000.00
(b) Medical deduction	1,859.53
	41,859.53
Net income as corrected	\$87,712.26

Explanation of Adjustments

(a) It is determined that \$40,000.00 of the amount of \$75,000.00 received by you in the year 1953 as the sales price of a parcel of real property "sold" to the Boy's Market, Inc., constitutes the distribution of a dividend, taxable as ordinary income under the provisions of Section 22 of the Internal Revenue Code of 1939.

(b) As a result of the increase in adjusted gross income made by item (a), the medical deduction has been adjusted as follows:

Adjusted gross income disclosed by return	\$55,887.13
Add: (a) Dividends	40,000.00
	\$95,887.13
Adjusted gross income as corrected	\$95,887.13
Medical expenses paid per return	\$ 7,934.82
	7,934.82
Less: 5% of \$95,887.13	4,794.35
	3,140.47
Medical deduction allowable	\$ 3,140.47
Claimed in return	5,000.00
	1,859.53
Increase in income	\$ 1,859.53

Computation of Tax

Net income	\$87,712.26
Less: Exemptions (6)	3,600.00
	<hr/>
Amount subject to tax	\$84,112.26
Joint return (one-half)	\$42,056.13
Tax on one-half	\$23,016.415
Joint return (multiplied by 2)	\$46,032.83
Correct income tax liability	\$46,032.83
Income tax disclosed by return, Account No. 232850217, Los Angeles District	17,628.70
	<hr/>
Deficiency in income tax	\$28,404.13

Received and Filed Feb. 5, 1958.

Served Feb. 6, 1958.

[Title of Tax Court and Cause.]

ANSWER

The Respondent, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1 to 4, inclusive. Admits the allegations contained in paragraphs 1 to 4, inclusive, of the petition.

5. A and B. Denies that the respondent erred as alleged in subparagraphs A and B of paragraph 5 of the petition.

6. A. Admits the allegations contained in the first unnumbered paragraph of subparagraph A of para-

graph 6 of the petition; denies the allegations contained in the second unnumbered paragraph of subparagraph A of paragraph 6 of the petition.

(1) to (5), inclusive. Denies the allegations contained in subsections (1) to (5), inclusive, of subparagraph A of paragraph 6 of the petition.

B. Denies the allegations contained in subparagraph B of paragraph 6 of the petition.

7. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the deficiency determined by the respondent be in all respects approved.

/s/ ARCH M. CANTRALL,
Chief Counsel,
Internal Revenue Service.

Of Counsel:

Melvin L. Sears,
Regional Counsel,

J. Earl Gardner,
Attorney

Internal Revenue Service,
1135 Subway Terminal Building,
417 South Hill Street,
Los Angeles 13, California.

Received and Filed April 1, 1958.

Served April 2, 1958.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It Is Hereby Stipulated That, for the purpose of this case, the following statements may be accepted as facts, and all exhibits referred to herein and attached hereto are incorporated in this Stipulation and made a part hereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

1. Petitioners are now and have been at all pertinent times, husband and wife, residing at 85 Fremont Place, Los Angeles 5, California.

2. The petitioners reported their income upon a calendar year basis and filed a timely return for the calendar year ending December 31, 1953, with the District Director of Internal Revenue for the Los Angeles District, a copy of which return is attached hereto and marked Exhibit 1-A.

3. The Notice of Deficiency, a copy of which is attached to the petition herein and marked Exhibit A thereto, was served timely upon the petitioners herein, who thereupon and within the time prescribed by law, filed their Petition to the Tax Court of the United States.

4. The deficiency in income tax, to wit, \$28,404.13, as set forth in said Notice of Deficiency, arises entirely from a transaction in 1953 treated by petitioners as a sale of a capital asset, but treated by the Commissioner as a receipt of dividends, by which adjustment the Commissioner proposed to increase ordinary income re-

ceived by the petitioners by the sum of \$40,000.00, and to decrease the allowance for medical deductions by the sum of \$1,859.53, which latter adjustment is occasioned solely by the increase of ordinary income as aforesaid.

5. That on and prior to September 27, 1945, the petitioner, Joe Goldstein, was the sole general partner in a limited co-partnership consisting of himself as general partner and of Edward Goldstein and Joe Goldstein (as Trustee for Max Goldstein) limited partners; that said partnership operated under the fictitious name of "The Boys' Market."

6. That on September 27, 1945, The Boys' Market, a limited co-partnership, leased a certain parcel of land situated in the City of San Gabriel, State of California, from Torley Land Company, a corporation, for a term of fifty years from and after the first day of November, 1945, that a true copy of said lease may be received in evidence and marked Exhibit 2-B, and reference is made to all of the terms and conditions of said lease as though fully set forth herein at this point.

7. That the Boys' Market, Inc., a corporation, was incorporated on June 19, 1936, but commenced business as of January 1, 1946, as of which date the assets of The Boys' Market, a limited co-partnership, were exchanged for shares of the capital stock of the said corporation.

8. That thereafter, and on January 1, 1946, the said lease was assigned by The Boys' Market, a limited co-partnership, as aforesaid, to The Boys' Market, Inc., a corporation, which said corporation thereafter assumed

possession of said property under the terms of said lease; a copy of which assignment may be received in evidence and marked Exhibit 3-C; that thereafter and in 1948 The Boys' Market, Inc. erected a building on said property in conformity with the terms of the lease hereinabove referred to.

9. That The Boys' Market, Inc. is the owner and operator throughout Los Angeles County, of a number of large supermarkets retailing groceries, meats, vegetables and sundries.

10. That during the calendar year 1953, and at all pertinent times thereafter, there were issued and outstanding a total of fifty-five hundred (5,500) shares of the capital stock of the said The Boys' Market, Inc., which said shares were the property of the following named individuals in the amounts set opposite their names:

Name	No. of Shares
Joe Goldstein	2720
Joe and Lillian Golstein as joint tenants	150
Lillian Goldstein, as Trustee for minor children	36
Edward Goldstein (brother of Joe)	1294
Max Goldstein (brother of Joe)	1271
Dorothy Goldstein (wife of Bernard Goldstein, brother of Joe) as Trustee for her minor children	24
Everett Eddy	5
	<hr/>
Total	5500

That the officers of said corporation were as follows:

Joe Goldstein	President
Edward Goldstein	Vice-President
Albert Goldstein	Vice-President
Max Goldstein	Vice-President
Everett Eddy	Secretary-Treasurer
Bernard Goldstein	Assistant Secretary-Treasurer

That the directors of said corporation were as follows:

Joe Goldstein	Everett Eddy
Lillian Goldstein	Edward Goldstein
Max Goldstein	Albert Goldstein
Bernard Goldstein	

11. That said property is located at a major intersection in the City of San Gabriel, to wit, the southeast corner of Valley Boulevard and Del Mar Avenue in said city, and consists of a parcel having 338 ft. on Valley Boulevard and 370 ft. on Del Mar Avenue.

12. Attached hereto and marked Exhibit 4-D is a copy of the Revenue Agent's Report sent to Petitioner on February 25, 1957.

/s/ WALTER M. CAMPBELL,
Counsel for Petitioners,

/s/ HART H. SPIEGEL,
Chief Counsel,
Internal Revenue Service,
Counsel for Respondent.

Filed Jan. 21, 1960.

[Title of Tax Court and Cause.]

Docket No. 71831. Filed December 27, 1960.

MEMORANDUM FINDINGS OF FACT AND
OPINION

Petitioners, owning over 50 per cent of the stock of a family corporation, acquired real estate, on which the corporation held a very favorable long-term lease and on which it operated a market, for \$35,000 and immediately resold it to the corporation for \$75,000, offsetting the short-term gain against a capital loss carry-over on their personal return. Held, the \$40,000 profit realized by petitioners was a disguised dividend from the corporation and taxable to petitioners as ordinary income.

Walter M. Campbell, Esq., for the petitioners.

Thomas F. Greaves, Esq., for the respondent.

Drennen, Judge: Respondent determined a deficiency in petitioners' income tax for the calendar year 1953 in the amount of \$28,404.13. The only issue is whether a gain of \$40,000, realized by petitioners on the sale of real estate, which they had purchased for \$35,000 on December 8, 1953, to their family corporation for \$75,000 on December 31, 1953, was taxable as ordinary income or as gain on the sale of a capital asset. Petitioners reported the gain as a short-term capital gain and offset it against a \$112,944.77 capital loss carryover. Respondent determined that the gain was in the nature of a dividend and taxable as ordinary income.

Findings of Fact.

Some of the facts were stipulated and are so found.

Petitioners are husband and wife living in Los Angeles, California. They filed a joint income tax return for the calendar year 1953 with the district director of internal revenue for the district of Los Angeles.

Joe Goldstein, the oldest of five brothers, the others being Max, Edward, Bernard, and Albert, started a retail grocery business as a sole proprietorship in 1925 when he was 17 years old. Joe gave each of his brothers his start in business by employing them in his expanding marketing business. On or before September 27, 1945, this business became a limited partnership with Joe as the sole general partner, and Edward and Joe, as trustee for Max, as limited partners. The partnership operated under the name the Boys' Market.

The Boys' Market, Inc., a California corporation, and hereafter referred to as the corporation, was incorporated in 1936 but was inactive until January 1, 1946, at which time all the assets of the limited partnership were transferred to it in exchange for capital stock of the corporation.

On September 27, 1945, the limited partnership leased a parcel of land situate on the corner of a major intersection in San Gabriel, California, from Torley Land Company for a term of 50 years beginning November 1, 1945. Joe had previously attempted to buy the land for a market site but had been unable to agree with

Torley on terms. The lease provided for rental of \$40,000 payable in installments of \$800 per year during the term thereof, and contained no provision for renegotiation. Among other things the lease required the lessee to construct on the property at its own expense a commercial business building costing at least \$20,000. The building was to be completed by November 1, 1946; otherwise lessee was required to post bond as security for completion of the building. All buildings constructed on the premises during the term of the lease were to become a part of the realty, to be delivered to the lessor upon termination of the lease. Lessee was required to pay all taxes, insurance, and other charges against the property. Lessee was entitled to assign the lease, provided that if the lease was assigned prior to completion of and payment for the original building, the lessee was to remain liable for the performance of all covenants of the lease as though no assignment had been made; if assigned after completion of the building the lessee would not, without the written consent of the lessor, be released or discharged from any obligations thereafter accruing.

This lease was assigned to the corporation, along with the other assets of the partnership, in 1946. The lessor was notified of the assignment and its attorney acknowledged receipt of the notice by letter dated March 28, 1946, which also advised the partnership that it was not exonerated from its obligations under the

lease and that lessor was not releasing the partnership. A market building was constructed on the leased premises by the corporation sometime in 1947 or 1948 and was thereafter occupied by the corporation as one of its eight retail stores.

From time to time after the lease was executed Joe unsuccessfully sought to purchase the fee in this land for the business. The minutes of a meeting of the board of directors of the corporation held on January 27, 1953, state that the president (Joe) reported that it might be possible to purchase the land on which the corporation built the San Gabriel market, and that the purchase of the land would enable "us" to procure a loan on the property and increase "our" working capital. The president and secretary were thereupon authorized to "make such purchase, if the price was satisfactory, and to arrange a loan on terms and conditions they deemed proper considering our loan agreement."

The minutes of a subsequent meeting of the board of directors of the corporation held on April 28, 1953, after referring to the previous discussion about the possibility of purchasing the San Gabriel property, stated: "It has now been decided that Joe Goldstein and Lillian Goldstein would buy this land as their private property, and they may at some time in the future, sell it to The Boy's Market." All of the directors were recorded as being present at this meeting.

As a result of further negotiations with Torley Land Company sometime before June 22, 1953, Joe entered into an agreement with Torley whereby petitioners would buy a lot in Las Vegas, Nevada, where Torley's president lived, and build an apartment house thereon for a total cost to petitioners of \$35,000, and upon completion of the construction petitioners would trade the Las Vegas property to Torley for the San Gabriel property with no cash involved. Escrows to carry out this agreement were executed on June 22, 1953, and Joe and Lillian put up \$35,000 of their own money to carry it out. The transaction was completed on December 8, 1953, on which date Joe and Lillian conveyed the Las Vegas property to Torley Land Company, and received in exchange a deed for the fee to the San Gabriel property, subject to the lease held by the corporation. The transaction was worked out this way at the request of Torley Land Company which had a tax basis of a little over \$10,000 in the San Gabriel property.

On December 31, 1953, Joe and Lillian conveyed the San Gabriel real estate to "The Boy's Market, Inc.," by quitclaim deed, for the sum of \$75,000 in cash, thus receiving \$40,000 in excess of the cost to them of said property. There were no minutes recorded in the corporation's minute book which showed a consideration of or authorization for the consummation of this transaction by the board of directors of the corporation.

During the year 1953 the corporation had issued and outstanding 5,500 shares of capital stock, which were held as follows:

Name	Number of shares
Joe Goldstein	2,720
Joe and Lillian Goldstein as joint tenants	150
Lillian Goldstein as trustee for minor children	36
Edward Goldstein (brother of Joe)	1,294
Max Goldstein (brother of Joe)	1,271
Dorothy Goldstein (wife of Bernard Goldstein, brother of Joe) as trustee for her minor children	24
Everett Eddy	5
Total	5,500

The officers of the corporation were:

Joe Goldstein	President
Edward Goldstein	Vice President
Albert Goldstein	Vice President
Max Goldstein	Vice President
Everett Eddy	Secretary-treasurer
Bernard Goldstein	Assistant secretary-treasurer

The directors of the corporation were:

Joe Goldstein	Edward Goldstein
Lillian Goldstein	Albert Goldstein
Max Goldstein	Bernard Goldstein
Everett Eddy	

The five brothers worked in various supervisory capacities in the business, with Joe as the principal executive officer and general manager. The brothers received salaries from the corporation, and bonuses when profits justified them. Max, Edward, and Bernard obtained their stock in the company by investing their bonuses in the business from time to time. Albert, the youngest brother, never owned any stock.

Everett Eddy was first employed as bookkeeper for the business in 1936. He acquired his shares of stock by gift from Max. As secretary-treasurer and a director of the corporation in 1953 Eddy was responsible for keeping the books and records of the company and for preparing minutes of the directors meetings. Some of the directors meetings were held informally as the brothers discussed matters among themselves in the offices of the corporation, and minutes of such meetings were not always recorded. At the more formal meetings of the directors Eddy took notes during the meeting from which he wrote up formal minutes within a few days to a month thereafter.

The corporation was successful and had a "triple A" rating with Dun & Bradstreet. It did not pay regular dividends and, although it had net earnings for 1953, it did not formally pay a dividend that year. The corporation had accumulated earnings and profits and available cash in excess of \$75,000 during the year 1953 and on December 31, 1953.

The corporation entered into a loan agreement with Provident Mutual Life Insurance Company of Philadelphia in 1950 under which it borrowed \$400,000, se-

cured by a mortgage on all of its real estate and fixed property including the company office and the store in San Gabriel. The note agreement and mortgage contained certain restrictive covenants which, among other things, limited the corporation's borrowing and dividend activities to some extent.

The transaction whereby petitioners acquired the San Gabriel property from Torley Land Company and immediately sold it to the corporation for a cash profit of \$40,000 was not an arm's-length transaction. Of the \$75,000 paid to petitioners by the Boys' Market, Inc., for the property in 1953, \$40,000 was not in fact consideration for the sale or exchange of a capital asset; it represented a distribution of corporate earnings.

Opinion.

The question is whether the \$40,000 profit realized by petitioners on their sale of the San Gabriel business property to their family corporation is taxable to petitioners as gain on the sale of a capital asset, or as ordinary income in the form of a disguised dividend.

This is a question of fact and this case must be decided on its own particular facts. The fact that the transaction was not at arm's length is not in itself a basis for disregarding the form of the transaction but it invites careful scrutiny as to whether all phases of the transaction were in fact what they purport to be in form; and this is particularly true here where the principal stockholders of a family corporation resell property to the corporation at a profit of over 100 per cent a few days after they acquired it.

Petitioners attempt to explain why the property was first acquired by petitioners and then sold to the corporation, rather than being acquired directly by the corporation, by evidence to the effect that Torley would not sell the property for cash but would only trade it for investment property in Las Vegas; that the brothers, as directors, would not permit the corporation to enter into such a transaction because, by reason of their own personal unpleasant experiences in Las Vegas, they would have nothing to do with anything in Las Vegas; that it was against company policy to own the property on which its markets were located; that for some unexplained reason Eddy thought such a transaction might violate the corporation's loan agreement with Provident Mutual Life Insurance Company of Philadelphia; and that entering into this transaction might involve the corporation in interstate commerce which for some unexplained reason might affect the wages and hours of its employees.

Petitioners further attempt to explain why they were so anxious to acquire this particular property, which the corporation held under a very favorable long-term lease, on the grounds that Joe was anxious to be relieved of the personal liability for performance of the lease which he had assumed as the general partner of the original lessee under the lease, and that the corporation was anxious to acquire the fee in the property so it could borrow money on it and could also use it for a sale and leaseback agreement with other parties.

No effort was made by petitioners to justify the profit of over 100 per cent petitioners made by reselling

this property to their controlled corporation in the same month they acquired it, except to attempt to show that the property itself was worth \$75,000 at the time. The only evidence of this value was the testimony of Eddy that he made some inquiry of the Bank of America as to the value of the property for loan purposes, and the testimony of an experienced independent appraiser who appraised the property a few days before the trial and gave his opinion that the value of the property as of 1953 was about \$79,000. This witness gave no satisfactory explanation of the effect on this value of the lease which still had 42 years to run at an annual rental of \$800, particularly to a prospective purchaser who held the lease. The evidence indicates that Joe himself would not pay more than \$35,000 for the property because of the favorable lease. The corporation, as holder of the lease, should have been in a better position to bargain for the property than anyone else.

It requires little analysis of the various reasons given to conclude that many of them are not only inconsistent with each other and implausible, but even if accepted as a whole would not reasonably explain why the corporation would refuse to enter into this transaction directly with Torley but would be willing to let its president and principal stockholder buy the property for \$35,000 and immediately resell it to the corporation for \$75,000. Based on our examination of all the evidence and our observation of the witnesses on the witness stand, we are convinced that Joe Goldstein was the dominant character in the corporation, that he had control of its policies and made the executive and administrative decisions, that the other stock-

holders and directors owed their livelihoods to Joe and would have agreed that the corporation do anything legitimate that Joe suggested, and that the real reason the transaction here involved was carried out in the manner and on the terms described was to permit the corporation to acquire a higher tax basis in the San Gabriel property and at the same time permit Joe to withdraw \$40,000 from the accumulated earnings of the corporation at a time when it could be offset against Joe's capital loss carryover and thus result in no tax to Joe.

It is quite apparent that the objective of all concerned with the corporation was to get the title to the San Gabriel property in the corporation and that this could easily have been accomplished in behalf of the corporation for \$35,000, by use of an agent or someone acting for the corporation if necessary, without exposure of either the corporation or its stockholders to any of the alleged problems which worried them, and that a direct acquisition by the corporation would just as well accomplish the objectives of all parties as would the indirect transaction.

We do not believe the corporation, with its favorable lease, would have paid \$75,000 for this property to an outsider. This is supported by the fact that its president and principal stockholder, Joe, had refused to pay more than \$35,000 for the property when negotiating in behalf of the corporation. We do not think the corporation would have paid more than \$35,000 for the fee to this property. Consequently, we have found as a fact that only \$35,000 of the \$75,000 paid by the corporation to petitioners was consideration for the

property, and that the remaining \$40,000 was a disguised dividend to petitioners. It will be taxed accordingly. *Albert E. Crabtree*, 22 T.C. 61, affirmed per curiam 221 F. 2d 807 (C.A. 2, 1955); *Sidney v. Levine*, 24 T.C. 147; *H. K. L. Castle*, 9 B.T.A. 931; secs. 22(a) and 115(a), I.R.C. 1939. Cf. *Palmer v. Commissioner*, 302 U.S. 63.

Sun Properties v. United States, 220 F. 2d 171 (C.A. 5, 1955), is heavily relied on by petitioners but is clearly distinguishable on the facts. The question there was whether the transfer of depreciable property to a wholly owned corporation was a sale or a contribution of capital. Here the question is whether a part of the sum paid by the corporation to the principal stockholder ostensibly as part of the purchase price of the land was in fact a disguised dividend. Accepting all the legal principles set forth in the *Sun Properties* case and applying those that are pertinent to the facts here would not, in our opinion, require a different conclusion than we have reached. The same is true of *Warren H. Brown*, 27 T.C. 27, also cited by petitioners. See *Aqualane Shores, Inc. v. Commissioner*, 269 F. 2d 116 (C.A. 5, 1959), affirming 30 T.C. 519, wherein the Court of Appeals for the Fifth Circuit distinguished its own *Sun Properties* case on the facts.

It follows that respondent's determination of the amount of medical expense deductible is also correct.

Decision will be entered
for the respondent.

Served Dec. 27, 1960.

Tax Court of the United States
Washington

Docket No. 71831.

JOE GOLDSTEIN and LILLIAN GOLDSTEIN,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion filed December 27, 1960, it is

Ordered and Decided: That there is a deficiency in income tax for the taxable year 1953 in the amount of \$28,404.13.

[Seal] /s/ W. M. DRENNEN,
Judge.

Entered and Served Dec. 27, 1960.

[Title of Tax Court and Cause.]

PETITION FOR REVIEW

Joe Goldstein and Lillian Goldstein, the petitioners in the above-entitled matter, by Walter M. Campbell, their attorney, hereby file their Petition for Review by the United States Court of Appeals for the Ninth Circuit of the decision by the Tax Court of the United States, entered on December 27, 1960, Tax Court, Memo. 1960-276, determining deficiencies in the petitioners' joint Federal income taxes for the calendar year 1953 in the amount of \$28,404.13; and said petitioners respectfully show:

I.

Jurisdictional Statement

The petitioners are residents of the Southern District of California and filed their joint income tax return for the calendar year 1953 with the Director of Internal Revenue at Los Angeles, California; that, pursuant to the provisions of Section 7482(b)(1) of Title 26, U.S. Code, the venue for review of said decision is the United States Court of Appeals for the Ninth Circuit.

II.

Nature of Controversy

Joe Goldstein and Lillian Goldstein are and were during the calendar year 1953, husband and wife, and filed a joint income tax return for said year.

The controversy arises from the holding of the Commissioner of Internal Revenue that the gain on the sale of a single parcel of real estate to a corporation of which the taxpayers owned directly or held in trust for minor children 2,906 shares out of a total of 5,500 outstanding, constituted a dividend rather than a short term capital gain as reported by the taxpayers.

III.

Relief Sought

The said petitioners, being aggrieved by the Findings of Fact and Conclusions of Law contained in the Memorandum Findings of Fact and Opinion of the Court, and by its decision pursuant thereto, desire to obtain a review thereof by the United States Court of Appeals for the Ninth Circuit.

/s/ WALTER M. CAMPBELL,
Attorney for Petitioners.
668 S. Bonnie Brae Street,
Los Angeles 57, California.

Duly Verified.

Received and Filed Jan. 19, 1961.

[Title of Tax Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON REVIEW

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the Petition for Review heretofore filed by the above-named petitioners:

- (1) The docket entries of all proceedings before the Tax Court;
- (2) Pleadings before the Tax Court as follows:
 - (a) Petition;
 - (b) Answer.
- (3) The Written Stipulation of Facts filed with the Tax Court;
- (4) All Exhibits filed with the Tax Court; [omitted]
- (5) Transcript of the testimony received by the Tax Court;
- (6) Findings of Fact and Opinion of the Tax Court;
- (7) The Decision of the Tax Court;
- (8) The Petition for Review;
- (9) This designation of contents of record on review.

/s/ WALTER M. CAMPBELL,
668 S. Bonnie Brae Street,
Los Angeles 57, California,
Attorney for Petitioners.

Affidavit of Service by Mail Attached.

Received and Filed Jan. 19, 1961.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the documents submitted under this certificate, 1 to 14, inclusive, as called for by the Designation of Contents of Record on Review, and the Rules, are the original documents of record on file in my office, and a true copy of the docket entries as they appear in the official docket of my office, in the case docketed at the above number, in which the petitioners in this Court have filed a petition for review.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 23rd day of March, 1961.

/s/ HOWARD P. LOCKE,
Clerk of the Court.

[Endorsed]: Filed March 28, 1961. Frank H. Schmid, Clerk.

The Tax Court of the United States

Docket No. 71831

JOE GOLDSTEIN and LILLIAN GOLDSTEIN,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

TRANSCRIPT OF PROCEEDINGS

Court of Appeals Courtroom, Federal Building, Los Angeles, California, Thursday, January 21, 1960.

Pursuant to notice, the above entitled matter came on for hearing at 9:30 o'clock, a.m.

Before: Honorable William M. Drennan, Judge.

Appearances: Walter M. Campbell, Esq., 417 South Hill Street, Los Angeles, California, appearing for the Petitioners.

Thomas F. Greaves, Esq., 1135 Subway Terminal Building, Los Angeles 13, California, appearing for the Respondent. [1]*

* * * * *

EDWARD L. EDDY,

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Would you state your name and your address?

*Page numbers appearing at top of page of Original Transcript of Record.

(Testimony of Edward L. Eddy.)

The Witness: Edward L. Eddy, 1784 Kaweah Drive, Pasadena, California.

The Clerk: Mr. Eddy, spell your last name, please.

The Witness: E-d-d-y.

The Clerk: Thank you.

Direct Examination

By Mr. Campbell:

Q. Now, please keep your voice up, Mr. Eddy. The acoustics in this courtroom are very bad.

A. I will try.

Q. Very well. What is your business or occupation, Mr. Eddy?

A. I am employed by the Boys Markets.

Q. And what is your official capacity?

A. At the present time I am executive vice president and treasurer.

Q. And how long have you been associated with the Boys Markets, a corporation? [34]

A. Over 23 years. As a corporation?

Q. As a corporation.

A. Since January 1st, 1946.

Q. Was that the date that it commenced doing business? A. The corporation?

Q. Yes.

A. Yes.

Q. The corporation itself had been incorporated some time prior to that time, had it not?

A. Yes, it had.

Q. But had not been activated, is that correct?

A. That is right.

(Testimony of Edward L. Eddy.)

Q. Prior to the incorporation were you associated with a co-partnership known as the Boys Markets?

A. I was.

Q. And what was your capacity with it?

A. I was business manager.

Q. And how long had that continued?

A. Since—

Q. Let's put it this way: When did you first become associated with the Boys Markets whether as a co-partnership or as a corporation?

A. In October 1936. Wait a minute, October 1936.

Q. And that relationship, you have been associated with the enterprise from then up to the present time, is that [35] correct?

A. That is right.

Q. And are you and were you during the year 1953 an officer of the Boys Markets, Inc.?

A. Yes, I was.

Q. A corporation. And what office did you hold during the year 1953?

A. Secretary-treasurer.

Q. Were you a member of the Board of Directors during that year? A. I was.

Q. Incidentally, had you held that office and had you been a board director since the time the corporation started doing business?

A. Yes.

Q. That is to say on January 1st, 1946?

A. Yes.

Q. Now, incidentally what is the business of the Boys Markets?

A. Retail food markets.

(Testimony of Edward L. Eddy.)

Q. At the present time how many markets do they operate? A. Eight.

Q. During the year 1936, at which time you were associated with them—pardon me—you were also associated [36] with them in the year 1945, is that correct? A. I was.

Q. So you are familiar, are you not, with the lease secured by the co-partnership from the Torley Land Company which lease has been marked in evidence here as Exhibit 2-B? A. Yes, sir.

Q. You are also familiar, are you not, with the assignment of that lease to the corporation on January 1st, 1946? A. Yes, I was.

Q. Which assignment has been received in evidence and marked Exhibit 3-C, is that correct?

A. It's the one I gave you.

Q. Yes. Now at the time that the assignment was made from the partnership to the corporation had any building been erected by the co-partnership on that real property? A. I don't think so.

Q. It is a fact, is it not, that the building was erected in 1948?

A. Could I ask the date of that assignment?

Q. The date of the assignment is January 1st, 1946.

A. There was no building on the property at that time.

Q. Subsequently a building was erected by the corporation, is that correct?

A. That is right. [37]

Q. Do you recall what year that was erected?

(Testimony of Edward L. Eddy.)

A. Nineteen four—it was started in 1947 and completed in 1948.

Q. Right. Now with regard to the assignment of that lease from the partnership to the corporation to your knowledge was notification of such assignment given to the Torley Land Company?

A. Yes, I believe they signed it.

Q. Now, let me ask you, going back a moment, at that time who were the active—what persons were active in the management of the partnership business?

A. I didn't get the question.

Q. As of the date of the assignment, namely, January 1st of 1946, or just prior to that time, what individuals were active in the operation of the business?

A. In what capacities?

Q. Well I am going to ask you that. Who were they? Who was the—

A. Well, Joe Goldstein was the general partner. Edward Goldstein, Max Goldstein and Albert Goldstein were limited partners, and Joe Goldstein as trustee for Max Goldstein was a limited partner.

Q. What duties did each of those persons perform?

A. Well they were all active in the business in different capacities. [38]

Q. In what capacities? What did they do?

A. At that time Edward Goldstein was active in the produce department as soon as he was discharged from the Service, and I don't recall the exact date he came back.

Q. When you say "active," what do you mean? What were his duties?

(Testimony of Edward L. Eddy.)

A. As the supervisor of the produce departments.

Q. All right.

A. Max Goldstein was the buyer for the produce departments.

Q. You say "a buyer." Was there more than one buyer or was he the buyer?

A. I am not sure whether he had a buyer with him at that time or not.

Q. I see. All right.

A. Albert Goldstein was supervisor and buyer and overseer of all the groceries and liquor departments, and Max Goldstein was the produce buyer.

Q. Bernard?

A. Oh, Bernard Goldstein was the meat buyer and meat supervisor.

Q. And what were your duties?

A. Well, I was secretary and treasurer. I handled the finances and the physical properties of the company.

Q. What were Joe Goldstein's duties as general manager? [39]

A. Joe Goldstein was president and general executive head of the firm.

Q. All right.

Mr. Greaves: This is with respect to the partnership or the corporation?

Mr. Campbell: I am talking about the partnership period.

By Mr. Campbell:

Q. Did those same general duties—

A. This is prior to the corporation?

(Testimony of Edward L. Eddy.)

Q. Yes. Now did those same general duties carry forward into the corporation?

A. They were, yes.

The Court: Would you state for the record the relationship of these various members of the Goldsteins?

The Witness: They are all brothers excepting myself.

The Court: All that were mentioned are brothers?

The Witness: That is right.

By Mr. Campbell:

Q. Now do you recall, Mr. Eddy, in 1953—strike that—first let me ask you this: In 1953 where were the offices of the corporation?

A. What were the offices?

Q. Where were they? Where were they located?
[40]

A. At 5531 Monte Vista Street, Los Angeles.

Q. And did each of the brothers whom you have mentioned have their offices there?

A. Yes, they did.

Q. Those were the general offices of the corporation?

A. They were the general offices.

Q. And as I understand it they were performing these same general duties on the day-to-day operation at that time that they had prior to the activation of the corporation, is that correct?

A. That is right.

Q. Now, what was the custom at that place of business during 1953 as to matters of policy and day-to-day operation; that is to say, were discussions had

(Testimony of Edward L. Eddy.)

among the individuals whom you have named and yourself?

A. Well, we are all very close there and in daily contact with each other.

Q. Were day-to-day problems discussed by all of you? A. Yes, they were.

Q. Was that true prior to the making of any decisions? A. Generally, yes.

Q. Now do you recall in 1953 that discussions were had among yourselves relative to the possible purchase of the fee; that is to say, the land underlying the building, the land subject to the lease for the Torley Land Company? [41]

Mr. Greaves: I object. I think many of counsel's questions are leading questions, your Honor.

Mr. Campbell: This is a preliminary question to ask if there were discussions.

The Court: Let's not worry too much about leading questions. I don't want you to be putting words into the witness' mouth.

Mr. Campbell: No, this is not a suggestive question.

Do you want the question read?

The Witness: Let's have the question over again.

Mr. Campbell: All right, will you read the question?

(The question was read.)

By Mr. Campbell:

Q. Do you recall the fact that discussions were had?

A. Yes, there were conversations about it, I remember.

(Testimony of Edward L. Eddy.)

Q. Now I am going to show you a book and I will show it to counsel, and ask you if this is the book containing the minutes of the Boys Markets, Incorporated?

A. That is the minute book.

Q. And was this minute book maintained by you as secretary of the corporation?

A. It was.

Q. Was it the usual course of business to maintain such a minute book?

A. Yes, regularly. [42]

Q. And were the minutes that appear therein entered on or within a short time after the events to which they relate?

A. Within a—

Q. How soon would you write up the minutes of a particular meeting?

A. Oh, it might be anywhere from a week to a month or more.

Q. I see. But the minutes then would not—would be prepared in not more than a month or so after a discussion on a particular subject, is that correct?

A. That is right.

Mr. Campbell: I am not going to offer this record into evidence but I am going to refer to certain minutes and read into the record from it, if the Court please.

Do you wish to see these first?

Mr. Greaves: Yes, I would, please. Is counsel going to put this into respondent's hands?

Mr. Campbell: I will have it marked for identification so that I may withdraw it at the end of the case, but read into the record the portions that I believe

(Testimony of Edward L. Eddy.)

are pertinent. Respondent can then, if there are portions that he desires to read, do the same rather than encumber the record with a large thing.

Mr. Greaves: Would it be proper, your Honor, to [43] note at this time that these are not exact minutes. We don't know—we know the date of the meeting from the record, but not when the minutes were written; that they are apparently merely the best recollection of the person who made them whom I believe was Mr. Eddy.

Mr. Campbell: That is a matter for cross-examination.

The Court: Yes, that is a matter I believe to be brought up by the witness. Is there any objection to his reading the minutes into the record?

Mr. Greaves: Only with this limitation that I just stated, that these are not exact records in that they are not quotations of individuals at any board of directors' meeting, but are the best recollection.

Mr. Campbell: I know of no small company that maintains that type of minutes.

The Court: That is a matter that you can bring out from the witness on cross-examination. I am just inquiring as to whether or not you have any objection to having it done this way rather than over the portion of the minutes in the record itself.

Mr. Greaves: No objection.

The Court: All right.

Mr. Campbell: I wish at this time to read from the minutes, regular meeting of the board of directors, the Boys Markets, Inc., the 27th day of January, 1953, reading [44] from Page 2 of those minutes:

(Testimony of Edward L. Eddy.)

“The president stated that it might be possible to purchase the land now under lease on which we built the San Gabriel market, and that the purchase of this land would enable us to procure a loan on the property and increase our working capital.”

End of quotation.

By Mr. Campbell:

Q. Those minutes were written by you, Mr. Eddy?

A. Yes, they were.

Q. And they expressed the expression that had been made among yourself and the other directors?

A. Yes, they did.

Mr. Campbell: I will also read from the minutes of April 28th, 1953 of the board of directors, reading from Page 2 of those minutes.

The Court: Excuse me, Mr. Campbell. What was the date of the first meeting?

Mr. Campbell: Of the first?

The Court: Yes, that you read.

Mr. Campbell: The first I read was January 27, 1953.

The Court: Board of directors?

Mr. Campbell: Board of directors. The second one I am reading is from the board of directors on April 28, 1953. [45]

“At a previous meeting there was a discussion about the possibility of purchasing land on which the San Gabriel Market was located. It has now been decided that Joe Goldstein and Lillian Goldstein would buy this

(Testimony of Edward L. Eddy.)

land as their private property, and they may at some time in the future sell it to the Boys Markets.”

By Mr. Campbell:

Q. Those minutes were also prepared by you?

A. Yes, they were.

Q. Now, Mr. Eddy, were you present during that period of time, namely, January, to which the first minutes refer, and thereafter up to April when the second minutes occurred, during which conferences and conversations were held between Joe Goldstein and his brothers relative to the acquisition or purchase either by Goldstein or by the corporation of this land in San Gabriel?

A. I don't remember any particular time it was discussed when we were all present, but I know there were discussions had about it because of the manner in which this title had to be acquired.

Q. I take it like most situations of that kind the brothers would be together, or one of them would be together or you would be with one or two of them, is that correct?

A. That is right.

Q. So that did you during that period of time discuss [46] with each of them individually, whether all at once or separately, discuss it with each one of them?

A. I doubt if I did.

Q. With which one?

A. Probably was—well, I don't recall, I am sorry.

Q. You don't recall which ones?

A. I don't recall which ones I discussed it with. Most of my discussions along that line were with Albert Goldstein because he was in the office almost all the

(Testimony of Edward L. Eddy.)

time. The other boys were out a lot traveling around the stores and doing their buying. However, they did come into the office almost every day.

Q. And do you recall being present when any of them expressed any opinions concerning it during this period of time and prior to this meeting that you referred to?

A. Well I can say my general recollection that they all were in favor of arriving at some kind of a situation where we could borrow money on that market.

Q. Yes.

Mr. Greaves: I wonder if this could be made a little more specific an answer. "Some sort of a situation" needs a little clarifying.

By Mr. Campbell:

Q. What do you mean by that?

A. Well, when we built that market under the terms [47] of the lease the lessor was not required to subordinate his title to any loan we might make. We did have a long commitment from an insurance company at one time which was later rescinded and we never were able to get a loan on it. The entire cost of the building came out from our working capital, cash. And I would also have liked to have seen some kind of a situation where we could borrow money on it.

Q. I see. And general discussions were had on that situation?

A. Yes, they were.

Q. Now, subsequently were there specific conversations relative to the proposal or any proposals of the

(Testimony of Edward L. Eddy.)

Torley Land Company? Do you recall discussions as to that?

A. The first I heard that the Torley Land Company was willing to dispose of their title to the Boys Markets was prior to either one of those meetings.

Q. Yes.

A. And of course we were interested. I don't remember the figures now, but his figures were higher than we thought that we ought to pay for it. We thought that because of the low income he was getting from that lease, the valuation he asked for that property, it was out of proportion to the income he was getting which was tied up to and till the end of that fiscal year.

Q. I take it that those were —[48]

The Court: Just a moment.

Mr. Greaves: Who does the witness refer to as "we"?

The Witness: Will you ask me a little louder, please?

Mr. Greaves: When you stated in that last answer "we," who were you referring to by saying "we"?

The Witness: I was—the group of us.

Mr. Greaves: The board of directors?

The Witness: Generally, yes. It wouldn't be anybody outside of that group.

By Mr. Campbell:

Q. I take it that these are matters that occurred prior to there ever being the final offer which led to the acquisition by Joe and Lillian Goldstein, is that correct?

A. That is right.

Q. Now, commencing in January of 1953 when did

(Testimony of Edward L. Eddy.)

you first hear the proposal to trade the fee for property in Las Vegas, Nevada?

A. Well, I would say that it was sometime between Christmas and a month later.

Q. Sometime between Christmas and the end of January of '53, is that correct?

A. That's right, Christmas of 1952.

Q. And did you have discussions among yourselves, [49] that is to say, among yourself with the other stockholders, namely, Joe Goldstein, Edward and Max and Bernard relative to this proposition of acquiring land in Las Vegas?

A. Well, I believe there was because the idea that we might be able to purchase it at a good price was brought into us by Joe Goldstein personally.

Q. Yes. And what was the reaction of these brothers?

A. At that time he was in touch with—Joe Goldstein I mean was in touch with Mr. Torley frequently, and we all presumed that he would proceed to arrive at some kind of a deal that we could get together on.

Q. Now I have referred you specifically to when the first proposition relative to the trade in Las Vegas—

A. That is right.

Q. When did that come up?

A. That is right. That was after January, as I remember it now. I am refreshing my memory from the minutes.

Q. All right. Now April 28th according to these minutes the board of directors said in effect that Joe and Lillian Goldstein go ahead and buy it as your own

(Testimony of Edward L. Eddy.)

property. Now what I am trying to get at is the discussion among yourselves, the other directors and stockholders as to why the corporation itself didn't want to buy the property or didn't buy the property?

A. Well I know they were not very anxious to get [50] involved in any deal in Las Vegas and I was particularly opposed to it because they were involved in a trade in another state, and I felt it was not consistent with a loan agreement we have on a long term loan with Provident Mutual Insurance Company.

Q. You are referring to your reasons. Did any of them express reasons as to why they did not want to be involved in a Las Vegas transaction?

Mr. Greaves: Objection. I believe the individuals who will be witnesses can answer that question better than this witness.

The Court: What was the question? Will you read it back?

(The question was read.)

The Court: I think he can answer that question yes or no. I will overrule the objection. The question is simply did they express any reason, not what the reasons were.

The Witness: Yes.

By Mr. Campbell:

Q. All right. Let me ask you this: As a result of your conversations with the other Goldsteins, that is the brothers other than Joe, did you determine that all of you were opposed to entering into this proposed trade transaction?

A. They would all prefer that Joe and Lillian buy

(Testimony of Edward L. Eddy.)

it and complete this trade situation and have that there as their [51] separate property. Another thing along that line with them owning it, they would be willing to subordinate the title to a mortgage loan on the building.

Q. I see. Were you—did you oppose as a director and officer the acquisition of the property in Las Vegas for the purpose of trading for the San Gabriel property?

A. I did.

Q. And for what reasons did you oppose it?

A. The reasons I just stated. I felt it was inconsistent with our note agreement.

Q. And you are referring to a note agreement existing at that time between the Boys Markets, a corporation, as borrower, and Provident Mutual Life Insurance Company of Philadelphia, as lender, is that correct?

A. That's right.

Q. I take it from what you say that you were of the opinion such a transaction would be in violation of the terms of that agreement, is that correct?

A. I felt it could possibly be in violation. That is the first loan of that kind we ever had or that I ever had any experience with.

Mr. Greaves: Is this witness a lawyer that he is capable of answering such a question that you are drawing such a conclusion from him?

The Court: I think he can answer what his thinking [52] was. I think you are getting into rather leading questions, Mr. Campbell. I would prefer to have the witness state it himself.

Mr. Campbell: Yes, sir.

(Testimony of Edward L. Eddy.)

By Mr. Campbell:

Q. What was your thinking on the matter?

A. Well, I have to make a statement in order to clarify that.

Q. Well, if it was your thinking why you are entitled to make the statement.

A. I was very anxious that we keep in their good graces because I was thinking ahead to a time when we might want to increase that loan or get a new loan or at the termination get a new loan.

The Court: By "their," you mean—

The Witness: Provident Mutual, yes.

By Mr. Campbell:

Q. What was the amount of that loan?

A. It was \$400,000.00.

Q. Yes. Now, go ahead. What was your thinking with regard to that loan as it affected the purchase of property in Las Vegas?

A. Well, in that note agreement there are certain negative covenants that we agreed to, and if you will let me read them I will tell you about it. [53]

Q. We are more concerned—

A. They are stated in there. I am going back several—

Q. We are more concerned with you rather than a legal interpretation of them, of what you thought. You stated that you opposed the purchase of the property in Las Vegas by the corporation so that we are concerned with what you thought.

A. By way of a trade, yes.

Q. That is right.

(Testimony of Edward L. Eddy.)

A. In another state. We also had another matter pending at that time where we didn't know whether we were in interstate commerce or not, a wages and hours matter.

Q. And those are matters that affected your thinking in opposing the acquisition of this property in Las Vegas?

A. That's right. I felt then and do now that our activities should be confined to California.

Q. Was it at that time or has it since been the policy of Boys Markets, Inc. to acquire real property generally, Mr. Eddy?

A. Only in recent years when we acquire land for the purpose of making a sale lease back deal on a long term basis.

Q. Do you own any land at the present time?

A. It is not our policy to own real estate. We own [54] land and building, our headquarters in Highland Park, have from the time that it was built.

Q. Is that the only real property?

A. The only way we could get a market in San Gabriel was to build it ourselves.

Q. You have subsequently sold this property, have you not? A. Yes, we have.

Q. On a sale and lease back?

A. Sale and lease back deal, 20 years lease.

Q. Now, Mr. Eddy, at the time that this transaction was entered into by Mr. Goldstein, you were fully advised of all of the circumstances, were you not? I mean, of the offer and the amount to be paid in connection with it? A. Yes, I was.

(Testimony of Edward L. Eddy.)

Q. And the cost to be put into the building in Las Vegas? A. Yes.

Q. And were these facts also disclosed by Mr. Goldstein to his brothers to your knowledge? Were those matters of open discussion at the office?

A. I can't say positively.

Q. You don't recall, I take it? A. No.

Q. All right. Now, subsequently and in December [55] 31st that property was purchased from Mr. Goldstein, was it not? A. Yes, that is right.

Q. The corporation bought it?

A. That is right.

Q. For what amount? Do you recall?

A. \$75,000.00 for the land.

Q. And at that time a deed was executed, was it not, from Joe and Lillian Goldstein to the Boys Market conveying that property? A. That is right.

Q. I see.

Mr. Campbell: I see no purpose in putting the deed in, your Honor, because I think it's an agreed fact that the property was conveyed. Is that not correct?

Mr. Greaves: I have not seen the deed, Mr. Campbell.

Mr. Campbell: Of course your Revenue Agent's report shows that much.

Mr. Greaves: Well, I haven't seen it.

Mr. Campbell: Might I suggest a morning recess at this time?

The Court: Pardon?

Mr. Campbell: Might I suggest a morning recess?

(Testimony of Edward L. Eddy.)

The Court: Yes, all right, we will recess for [56] five minutes.

(Short recess taken.)

Mr. Campbell: Now, may we have that last question, please?

The Court: The last thing you said was you saw no reason for putting the deed into evidence.

Mr. Campbell: May we stipulate, Mr. Greaves, that the property in question was conveyed by a quit claim deed executed December 31, 1953, by Mr. Joe Goldstein and Lillian Goldstein, deeding the property referred to in San Gabriel to Boys Markets, Inc., a California corporation, which deed was recorded December 31st, 1953 in the official records of the County of Los Angeles on that date, to wit, December 31st, 1953, in Book 43506, Page 116 of said records. Will it be so stipulated?

Mr. Greaves: I will stipulate that the records so stated have a copy of that conveyance.

Mr. Campbell: I do not get your distinction.

Mr. Greaves: December 31st, 1953 from Joe Goldstein and Lillian Goldstein to the Boys Markets, Inc.

The Court: What is it now that you are willing to stipulate?

Mr. Greaves: That there is in the records of Los Angeles County—is that it, Mr. Campbell?

Mr. Campbell: Yes. [57]

Mr. Greaves: A conveyance of the subject San Gabriel property from Joe Goldstein and Lillian Goldstein to the Boys Markets, Inc.

Mr. Campbell: And attached thereto are—

(Testimony of Edward L. Eddy.)

The Court: Mr. Campbell, I think I would prefer to have these documents under discussion in evidence.

Mr. Campbell: Yes, I think so.

By Mr. Campbell:

Q. I show you a document, a grant deed, and ask you if that is the deed by which the Boys Markets, Inc. obtained title to the property from the Goldsteins located in San Gabriel?

A. That is correct. That's the deed.

The Court: You had better have that marked for identification, Mr. Campbell.

Mr. Campbell: I am going to offer it in evidence, if the Court please.

The Clerk: Petitioners' Exhibit No. 5 marked for identification.

(Petitioners' Exhibit No. 5 was marked for identification.)

Mr. Campbell: I call attention to the fact that there are affixed thereto \$82.50 of excise stamps in connection with such transfer.

The Court: Do you have any objection to it? [58]

Mr. Greaves: No objection.

The Court: Petitioners' Exhibit No. 5 will be received in evidence.

(Petitioners' Exhibit No. 5 was received in evidence.)

Mr. Campbell: Your Honor, may that be marked Exhibit No. 7?

The Court: Have you already marked it?

The Clerk: Yes, your Honor, I have so marked it as Petitioners' Exhibit No. 5.

Mr. Campbell: Very well.

(Testimony of Edward L. Eddy.)

By Mr. Campbell:

Q. Now, Mr. Eddy, what were the circumstances under which the Boys Markets purchased that property on December 31st for what you have described to be \$75,000.00 subsequent to its acquisition by Mr. Joe and Mrs. Lillian Goldstein?

A. To acquire title to the property, thinking of making a sale lease back deal, which never did occur, however.

Q. I occurred subsequently, however, did it not?

A. Yes, it did.

Q. Not at that time?

A. Well, sometime later.

Q. Were you attempting to achieve such a result [59] at that time or you had in mind achieving such a result at that time, is that correct?

A. That is right, yes.

Q. Will you state whether or not there was involved at that time the matter also of the loaning capacity of the corporation?

A. That is right. We could have borrowed on a long term loan.

Q. Now, in connection with the acquisition on December 31st, 1953 of that property for \$75,000.00, did you personally make any investigation to determine whether or not that was a fair price to pay for the property? A. Yes, I did.

Q. And what conclusion did you come to?

A. That that was a fair market value.

Q. What type of investigation did you make? Was

(Testimony of Edward L. Eddy.)

that made before the purchase, before you bought it for \$75,000.00? A. Yes, it was.

Q. All right. Now, what type of investigation did you make?

A. I made an inquiry at the Bank of America as to what we could borrow on that, and what would be a fair market value of the land, and I was informed by them that \$75,000.00— [60]

Mr. Greaves: Objection, your Honor. We can't cross-examine the testimony this witness is about to give.

By Mr. Campbell:

Q. Just stop at that point. You made an inquiry of the Bank of America, is that correct?

A. That's right.

Q. Did you make other inquiries for that purpose?

A. No, I didn't.

Q. I see. However, I gather that you were satisfied then from your statement that that was a fair price, is that correct? A. I was satisfied.

Q. Was it at any time your intent or was there ever at any time an expression of any of the other stockholders in your presence that the purchase of this transaction was to pay a dividend to Joe and Lillian Goldstein? A. No.

Q. Or that—was there ever any discussion that Joe and Lillian Goldstein in acquiring the property were acting simply as the agent or in behalf of the corporation?

A. You mean when they bought it?

Q. Yes. A. No. [61]

(Testimony of Edward L. Eddy.)

Q. Was there ever any intent on your part or discussion between yourself and any other of the stockholders or directors of the corporation that this was a means of paying some money over to Joe Goldstein or his wife?

A. No, not at—no. We knew there was a profit in it, of course.

Q. You knew the whole transaction, isn't that correct? A. Yes.

Q. But I gather there was no intent to prefer Joe Goldstein, to give any preference to Joe Goldstein, is that correct? A. That is right.

Mr. Campbell: You may cross-examine.

Mr. Greaves: May I have just a moment, if your Honor please?

The Court: Yes.

Cross-Examination

By Mr. Greaves:

Q. Mr. Eddy, I wonder if you can tell the Court the year in which the Goldstein family commenced in the market business, the business of dealing in markets?

A. Being partners?

Q. No, just when did they open their first store? When did Joe open his first store as an individual or as [62] a partner or however the Goldsteins started in the market business?

A. Well, it was around 1925 or '27, along in there somewhere.

Q. Was that Joe Goldstein who commenced?

A. Joe Goldstein commenced it.

(Testimony of Edward L. Eddy.)

Q. So you would say the first Boys Market was opened in 1925, '26, '27, in that general period? Late 1920's?

A. I know it was about there sometime because—well,—

Q. Do you know whether the first Boys Market was operated as a limited partnership or as a corporation or as a sole proprietorship?

Mr. Campbell: Objected to.

The Witness: Sole proprietorship.

Mr. Campbell: Objected to as immaterial, if the Court please.

Mr. Greaves: Attempting to get background, your Honor, control of this corporation.

The Court: All right, you may answer that.

The Reporter: There is an answer on the record.

Mr. Greaves: I didn't hear the answer.

(The record was read.)

By Mr. Greaves:

Q. Operated by Joe Goldstein? [63]

A. Yes.

Q. Do you know when the Boys Markets was incorporated, the year that a charter was acquired from the State and the incorporation took place?

A. 1936.

Q. Were you one of the organizers and incorporators? Were you one of the organizers and incorporators of that corporation, sir?

A. No, I was not, no.

Q. Do you know who were the organizers and incorporators?

(Testimony of Edward L. Eddy.)

A. Well, from the records it was Joe and his four brothers.

Q. By the records you speak of the charter?

A. Right.

Q. Do you know in what business form the Boys Markets operated between the years of incorporation, that is 1936, and the year 1946 when it—

A. I am sorry I didn't get the first—

Q. Pardon me. Strike it. Let me rephrase that.

In what form, business form, did the Boys Markets operate from the time it was—took out a corporate charter in 1936—and the time it became the Boys Markets, Inc. on January 1st, 1946?

A. It was a limited partnership in 1936. It was [64] the entire year.

Q. From 1936 to 1946 it was a limited partnership?

A. That's right.

Q. Fine, thank you.

Do you know when the Boys Markets commenced business as a partnership rather than a sole proprietorship?

A. January 1st. Wait a minute.

Q. You say Joe Goldstein operated the Boys Markets as a sole proprietorship?

A. From the time he first started until January 1st, 1936.

Q. Fine, thank you.

Now, you say that you were the business manager of the limited partnership?

A. I started in October, 1936.

Q. In what capacity?

(Testimony of Edward L. Eddy.)

A. I started as a bookkeeper.

Q. As a bookkeeper?

A. Right.

Q. How long were you the bookkeeper?

A. Oh,—

Mr. Campbell: Still are, aren't you?

The Witness: Probably a year.

By Mr. Greaves:

Q. A year [65] A. Yes.

Q. Then you became a general manager?

A. No, business manager.

Q. Business manager, pardon me.

As the bookkeeper of the limited partnership were you familiar with its capital structure, that is, the partnership interests of the respective partners?

A. Yes, I was.

Q. Do you know what percentage the partner Joe Goldstein was?

Mr. Campbell: Objected to as immaterial, if the Court please.

The Witness: I don't—

Mr. Campbell: Just a moment, that is objected to as immaterial.

The Witness: The percentage—

The Court: The percent of ownership Joe Goldstein had?

Mr. Campbell: Back in 1946.

The Court: Well, it seems to me it is going pretty far back. I think the Government is trying to develop something. I will overrule the objection. You can answer the question.

(Testimony of Edward L. Eddy.)

The Witness: Well, I don't remember their interest.
[66]

By Mr. Greaves:

Q. That is fine, Mr. Eddy.

Do you recall who the partners were?

A. Yes. Joe Goldstein was the general partner, Edward, Max and Albert were limited partners, and Joe Goldstein was a limited partner as trustee for Max Goldstein.

Q. Do you know who the partners were on September 22nd, 1945?

A. They were the same. I might have to back up on that. I am not sure whether that trust had been eliminated or not at that time.

Mr. Greaves: May I see Exhibit B-2, please?

By Mr. Greaves:

Q. Now, I hand you Exhibit B-2 in this case, Mr. Eddy, and ask you if you can identify this for the record at this time.

A. That is the ground lease for the San Gabriel property.

Q. Executed between what parties?

A. Between the partnership and the Torley Land Company.

Q. I wonder if I could get you to read this first paragraph on the lease.

A. "This indenture of lease made this 27th day of September, 1945 by and between Torley Land Company, a [67] corporation, hereinafter designated as lessor, and the Boys Markets, a limited

(Testimony of Edward L. Eddy.)

partnership consisting of Joe Goldstein, as general partner, and Edward Goldstein and Joe Goldstein as trustees for Max Goldstein, limited partners.”

Q. Thank you. Is your testimony at this time, Mr. Eddy, that all of the brothers were partners in this limited partnership and that this document is incorrect?

Mr. Campbell: Oh, just a minute. That is objected to as argumentative and calling for his conclusion.

The Court: Well,—

Mr. Campbell: If counsel wants to amend—

The Court: Let's ask him what his testimony—

Mr. Campbell: If counsel wants to amend the stipulation—

The Court: I see that it is stipulated that on September 22nd, 1945 Joe Goldstein was the sole general partner in the limited general partnership consisting of himself, as the general manager and the other two, Edward and Joe Goldstein as trustees, as limited partners. I suggest, Mr. Eddy, if you don't know, if you are not sure of an answer to a question, just say you don't know. But now you have testified that as of that date the partnership consisted of all five brothers. What is your testimony now? That's what he is trying to get at. [68]

The Witness: Well, at sometime, and I don't recall the dates, Albert Goldstein and Bernard Goldstein were eliminated as to any capital interest in the business. I don't remember what date that occurred.

The Court: Has he answered your question, Mr. Greaves?

(Testimony of Edward L. Eddy.)

Mr. Greaves: I think I have gotten as satisfactory an answer as I can get at this time, your Honor. Thank you.

Mr. Campbell: I might state, your Honor, if the Revenue Agent took the position that that was a partnership at that time, and that is set forth in the stipulation, if counsel has facts that the others were actually partners at the time of the execution of that lease, I have no objection to amending the stipulation, but so far as I know the stipulation speaks the truth.

Mr. Greaves: Your Honor, at this time I should like the record to show that every document executed by the Boys Markets, a limited partnership, states that the partners in this corporation were Joe Goldstein as general partner, Edward Goldstein as limited partner Joe Goldstein as limited partner, trustee for Max Goldstein. I am trying to ascertain the facts.

The Court: It is a matter of evidence, Mr. Greaves. You can't simply make a statement for the record [69] without proving it in some way.

Mr. Greaves: These are documents in evidence, your Honor.

The Court: Well, then, they will speak for themselves.

Mr. Greaves: Yes, I am just noting this.

The Court: You didn't limit yourself to documents in evidence.

Mr. Greaves: I am sorry.

The Court: You said "every document."

Mr. Greaves: Would you so correct the record, please?

(Testimony of Edward L. Eddy.)

By Mr. Greaves:

Q. Mr. Eddy, do you know where the funds and assets that made up the limited partnership came from?

A. The assets that came from the limited partnership?

Mr. Campbell: It is obvious he misunderstands the question.

Mr. Greaves: I am repeating it for him.

By Mr. Greaves:

Q. Do you know who contributed the assets?

A. The original—

Q. Of the corporation?

A. The original limited partnership in 1936, the [70] capital was contributed by the individuals, all of them.

Q. By all of them you mean each and every one of these brothers? A. Right.

Q. Did you contribute any?

A. Pardon?

Q. Did you contribute any of the assets of the limited partnership?

A. No, I didn't.

Q. Were you paid a salary as an employee of the limited partnership? A. I was.

Q. Were you familiar with the management of the limited partnership? A. Yes, I was.

Q. In your opinion and based on your familiarity with the management of the limited partnership, would you state that Joe Goldstein had a more important role in the management of that limited partnership than the other partners?

(Testimony of Edward L. Eddy.)

Mr. Campbell: Objected to as immaterial, incompetent, if the Court please. If he was a general partner under any view that counsel takes here.

The Court: Well, if you are speaking of his activities in the partnership, I think if you know the [71] answer you can ask the question. I will overrule the objection.

The Witness: Well, he was the chief executive of the partnership and later became chief executive of the corporation, but each one of these fellows, including myself, had responsibilities and could act on our own initiative.

By Mr. Greaves:

Q. Who determined that the Boys Markets would lease the property in San Gabriel from the Torley Land Company?

A. Who determined that we would lease it?

Q. That is correct.

A. Well, that was discussed by all of us and we looked at the market site and considered it as a possible location for a market. We were all out there and looked at it. We analyzed the territory.

Q. Who initially had the idea?

A. Pardon?

Q. From whom did the idea spring that it would be a good property to lease or a bad property?

Mr. Campbell: I think this is all immaterial, if the Court please.

The Court: Well, I do not see very much materiality in it, either. Somebody has to initiate it, but nevertheless— [72]

(Testimony of Edward L. Eddy.)

Mr. Greaves: I am trying to show, your Honor, that the petitioner Joe Goldstein in fact was a director of the destinies—

The Court: I will overrule the objection. Go ahead and answer the question if you know.

The Witness: I didn't get your question, I am sorry. I am a little hard of hearing. I want you to take that into consideration.

By Mr. Greaves:

Q. I appreciate that. I will try to speak a little bit louder.

Do you remember the conversation that was had with respect to the possibility of leasing the San Gabriel property among all of the members of the partnership?

A. Well, I don't remember the specific—

Q. Well, generally.

A. We all decided that it was a good market location.

Q. Do you recall who brought the subject up?

A. Who brought it up?

Q. Yes.

A. Well, I believe I did. I negotiated that lease and conducted all the negotiations.

Q. You represented the Boys Markets in negotiating?
A. Yes, I did. [73]

Q. With the Torley Land Company on the lease?

A. Yes, I did.

Q. Well, then, these negotiations that you conducted with the Torley Land Company—strike that—

Who determined that the Boys Markets would cease

(Testimony of Edward L. Eddy.)

business as a limited partnership and commence business as a corporation?

A. I don't know, I don't remember.

Q. Who determined that the assets of the limited partnership would be exchanged for stock in the corporation?

A. Well, that was my recommendation.

Q. Did you check that recommendation with anyone or did you put it into effect by yourself?

Mr. Campbell: Now, I object to that, if the Court please. In the first place it is impossible. He couldn't—

The Court: It is impossible to put it into effect. He didn't own the assets or did he get the stock.

By Mr. Greaves:

Q. Did you state your recommendation to anyone in the limited partnership?

A. Yes, with all of them.

Q. To all of them. Did you have any voice in discontinuing the business of the limited partnership as a limited partnership? [74]

A. No, not as a limited partnership.

Q. Why did you recommend that it become a corporation?

A. Well, I thought—

Mr. Campbell: I object, if the Court please. I can see no relevancy in this line of examination to the problem which we have before us.

Mr. Greaves: I will strike that question then, your Honor.

By Mr. Greaves:

Q. When did you become a stockholder in the corporation?

(Testimony of Edward L. Eddy.)

A. Some years after it was organized, I don't remember.

Q. Not on January 1st, 1946? A. No.

Q. Do you know the authorized stock of the corporation, capital stock of the corporation?

A. The authorized capital stock?

Q. That is correct, sir.

A. I think it was originally \$500,000.00.

Q. How many shares?

A. At \$100.00 that would be 5,000 shares, wouldn't it?

Q. You don't know the answer to that question?

Mr. Campbell: These are all matters of record. [75]

By Mr. Greaves:

Q. When did you acquire your stock in the corporation?

Mr. Campbell: Objected to as immaterial.

The Witness: I don't remember.

The Court: Overruled.

By Mr. Greaves:

Q. From whom did you acquire the stock?

A.. From one of the brothers.

Q. How did you acquire the stock, from which brother? How did you acquire this stock purchase, a gift? A. A gift from Max Goldstein.

Q. And what did you say the year was?

A. I didn't say. I don't know. I don't remember.

Q. Are you married? A. Yes, I am.

Q. Does your wife own any stock in this corporation?

Mr. Campbell: Just a minute. I object to that.

(Testimony of Edward L. Eddy.)

We have a stipulation here as to the stock ownership, if the Court please.

The Court: Isn't that correct, Mr. Greaves?

Mr. Campbell: If counsel wants to change it—

Mr. Greaves: I am sorry, Mr. Campbell.

By Mr. Greaves:

Q. You are presently the vice president, a vice president in the Boys Markets? [76]

A. And treasurer.

Q. And treasurer? A. Right.

Q. In 1953 in what capacity did you serve the Boys Markets? A. Secretary and treasurer.

Q. Were you a stockholder in 1953?

A. I don't remember.

Mr. Campbell: We have stipulated that he was. It's in the stipulation.

Mr. Greaves: I am trying to pin him down to see if he remembers the general period of time.

Mr. Campbell: I object to trying to impeach the witness. These things have already been stipulated to, if the Court please.

The Court: Yes. I do not think you should try to confuse the witness on facts that you have stipulated.

By Mr. Greaves:

Q. It was also stipulated that you were a member of the board of directors. A. That's right.

Q. And what is your title on the board of directors?

A. What?

Q. Title of your position on the board of directors.

A. I am just a director. [77]

Q. When did you become a director?

(Testimony of Edward L. Eddy.)

A. When the corporation was organized, took over the business of the Boys Markets.

Q. How did you become a director or were you appointed or elected?

Mr. Campbell: Objected to as immaterial, if the Court please.

The Court: Well, you are asking questions that seem to me just encumber the record. It is obvious that he has to be elected, I suppose. I will overrule the objection.

Go ahead and answer. How did you become a member of the board of directors?

The Witness: I was elected.

By Mr. Greaves:

Q. What was Joe Goldstein's title on the board of directors? A. Chairman.

Q. What is Lillian Goldstein's title on the board of directors? A. She is a director.

Q. Did the Boys Markets have a stock bonus plan in 1953?

Mr. Campbell: Objected to as immaterial, if the Court please. I can see no materiality of a stock bonus plan to this controversy. [78]

The Court: Do you plan to tie that in in some way, Mr. Greaves?

Mr. Greaves: I had an alternative question, your Honor, that I read by mistake. I would agree that it should be stricken.

The Court: One thing I would like to correct is the statement I made that obviously you must have been elected.

(Testimony of Edward L. Eddy.)

Were you elected by the stockholders or were you elected by the directors to fill a vacancy?

The Witness: No, by the stockholders at the outset of the taking over the Boys Market business by the corporation.

The Court: All right.

By Mr. Greaves:

Q. Do you know whether Albert Goldstein ever owned stock in Boys Markets, Inc.?

A. He never did.

Q. To your knowledge as a director and now stockholder of this corporation, did it declare a dividend in 1953?

Mr. Campbell: Objected to as immaterial.

The Court: Overruled. You may answer.

The Witness: I will have to ask for the question again. [79]

By Mr. Greaves:

Q. Did the Boys Markets, Inc. declare a dividend to its shareholders in 1953? A. No.

Q. Did the Boys Markets operate at a profit in 1953? A. Yes.

Q. Has the Boys Markets ever declared a dividend?

Mr. Campbell: Objected to as immaterial.

The Court: Overruled. If you know the answer, you may answer.

The Witness: Yes.

By Mr. Greaves:

Q. Do you know what year? A. No.

Q. Now, with respect to these minutes of the Boys

(Testimony of Edward L. Eddy.)

Markets which petitioners' counsel read into the record of this case that you kept for the purpose—

A. I kept them, yes.

Q. You did keep them? A. Yes.

Q. With respect to the minutes covering the meeting of January 27, 1953—

A. Did I what?

Q. I am just trying to put you in the frame of [80] reference of the question I am going to ask. I am going to ask you a question with respect to the meeting of January 27, 1953. Do you know when you made or recorded those minutes?

A. The minutes?

Q. Yes.

A. I don't know the exact date. It was after the meeting.

Q. Were those exact minutes of the proceedings or were they your best recollection?

A. No, they were made from notes I accumulate in my file.

Q. Do you recall any reason given in the meeting of January 27, 1953 for providing that Joe Goldstein could sell the San Gabriel property to the Boys Markets, Inc. at any time?

Mr. Campbell: Just a moment. That's objected to as misleading and misstating the record.

Mr. Greaves: May I have a copy of that meeting?

Mr. Campbell: The meeting that he is referring to, he is quoting from the minutes of April 28th rather than from the minutes of January 23rd.

Mr. Greaves: May I leave it there, please?

(Testimony of Edward L. Eddy.)

Mr. Campbell: Certainly. I will make my objections upon that ground, your Honor. [81]

The Court: You will reframe your question, please.

Mr. Greaves: Yes, sir. I am just trying to find it in here.

The Court: If you want to ask questions about the other date it would be perfectly all right, but I would like to have you check it to make sure you are referring to the right one.

Mr. Greaves: I was looking for it.

By Mr. Greaves:

Q. Would you like to see this, Mr. Eddy, as I am referring to it? I am sorry.

A. I might answer the question better.

Q. Right. I now refer, Mr. Eddy, to the minutes of the regular meeting of the board of directors of the Boys Markets, Inc. held on April 28, 1953.

A. Yes.

Q. And I will now direct a question to the provision in those meetings on Page 2 thereof to this statement, "It has now been decided that Joe Goldstein and Lillian Goldstein would buy this land as their private property, and they may at sometime in the future sell it to the Boys Markets."

A. I recall that. Is that what your question was?

Q. Yes, sir, I am asking you now if you recall why [82] it was so provided that they could sell this land at some time in the future to the Boys Markets?

A. There was a trade involved on the property whereby the title could be acquired by somebody building an apartment in Las Vegas as and after that was

(Testimony of Edward L. Eddy.)

all completed and Joe and Lillian had title we could buy the property then without the complication of that trade and construction in another state.

Q. Was it your understanding at the time of that meeting that they would sell this property to the corporation?

Mr. Campbell: Now, objected to. That's a conclusion on his part. He can state what was said, but his understanding is—he can express what they said they would do or what they were willing to do.

The Court: I think he can testify as to what his understanding was of what they were going to do. I will overrule the objection.

The Witness: Now the question, please?

Mr. Greaves: Would you read that question, please?
(The question was read.)

The Witness: Not necessarily. They might. I don't know that there was any agreement that they would sell it, either verbal or written, and there was no written agreement.

By Mr. Greaves: [83]

Q. Mr. Eddy, was there or was there not a written agreement?

A. That they would sell it? No.

Mr. Campbell: He said there was no written agreement.

The Court: Please do not make objections. I think he is entitled to cross-examine this witness and check on statements that he made before.

Mr. Campbell: Very well.

By Mr. Greaves: You state I believe on direct ex-

(Testimony of Edward L. Eddy.)

amination that you first learned of the possibility of a trade for the San Gabriel—strike that—let me start again.

I believe, Mr. Eddy, on direct examination you testified that you first learned of the possibility of a trade between the Boys Markets and Torley Land Company whereby the Boys Markets—whereby someone would get the San Gabriel property in exchange for property in Las Vegas. Do you recall that testimony or that transaction or both? A. Yes.

Q. And you also testified I believe that you heard about this trade sometime around Christmas of 1952. I am just trying to refresh your memory at this time on your testimony.

A. I am not sure that the trade was known about [84] around Christmas.

Q. In any event, Mr. Eddy,—

A. We knew that the property was available. The reason I know that date is because the Santa Anita races started the day after Christmas.

Q. I am not curious about the date, Mr. Eddy. I want to know who told you that this land was available.

A. Joe Goldstein.

Q. You stated on direct examination that it is not the policy of the Boys Markets to acquire real property, land? A. That is right.

Q. Except for an occasional transaction where they acquire property for sale and lease back?

A. That became a policy later to acquire land for that purpose.

Q. Now, with respect to this land, the Boys Mar-

(Testimony of Edward L. Eddy.)

kets, Inc. allegedly purchased or purchased on December 31st, 1953— A. Yes.

Q. —did you testify that this land was subsequently sold and then leased back?

A. That was our thinking, that we would enter into a sales lease back deal for that property after acquiring the title. [85]

Q. You did acquire title? A. We did.

Q. You did sell the land?

A. Yes, we did. We sold it to—

Q. To whom did you sell this property?

A. We sold it to two brothers and one wife. Their names are Slavick. I don't recall their first names.

Q. Are they any relation to the petitioners in this case? A. Any relation to whom?

Q. Mr. and Mrs. Goldstein, Joe Goldstein.

A. No, they are not, no.

Q. Do you remember when this land was sold to the Slavicks? A. I believe it was in 1959.

Q. Can you be more specific?

The Court: You mean as to the actual—

By Mr. Greaves:

Q. As to the actual date.

A. As to an actual date, I believe it was in the summer of 1959.

Q. Fine. Thank you.

Now, you also stated on direct examination, that it was your opinion that the San Gabriel property was worth \$75,000.00? [86]

A. That is right.

Q. Did you check with anyone else other than the Bank of America? A. No.

(Testimony of Edward L. Eddy.)

Q. And you based—what did you base your estimation on?

A. They told me that their idea of a fair market value was \$75,000.00.

Mr. Greaves: I would like that stricken. I just wanted to know what you base—

Mr. Campbell: I object.

The Court: You asked the question.

Mr. Campbell: I ask that it not be stricken. It is an answer to the question.

By Mr. Greaves:

Q. All right. They told you that it was worth \$75,000.00? A. Yes.

Q. Why did they? For what purpose did they tell you this?

A. I was just suggesting the possibility of a loan with them.

Q. For the purchase of this land?

A. If we owned the land and the building of borrowing money on it. [87]

Q. And this is the sole basis of your estimation of the value of this property, is that correct?

A. That is right.

Q. Now, at the meetings of the board of directors of January 27, 1953 and April 1953—I am looking for the date—April 28, 1953, were Joe Goldstein and Lillian Goldstein in attendance?

A. We do not have formal board meetings with all members present. We meet many times all of us together during the quarters between these board meetings where various matters we are considering are dis-

(Testimony of Edward L. Eddy.)

cussed. Many times they are not all there, but then the same matters are discussed with others when they are there.

Q. Do you have meetings—does the Boys Markets, Inc. board of directors have meetings in which records are not kept, and which minutes are not made?

A. These minutes are based on notes of various meetings we have throughout the quarter.

Q. I do not believe you understood my question, Mr. Eddy.

A. Formalized in the form of the minutes on the date of the meeting.

Q. Does the board of directors meet at any time—strike that, and let me start this one again.

Are there any meetings of the board of directors [88] in which minutes are not made?

A. Not of a meeting of the board of directors?

Q. So when you have these informal meetings you conduct no business?

A. We conduct business, but they are not formal board meetings. We are in there all together every day.

Q. Do you keep minutes of these informal meetings?

A. I keep notes.

Q. Do you record them as minutes of the corporation? A. No.

Q. Of the board of directors?

A. I make up my minutes from notes I have kept of what has transpired.

Q. Did Joe and Lillian Goldstein attend the board of directors meetings in which it was determined that they could purchase this property for themselves?

(Testimony of Edward L. Eddy.)

A. I don't recall, I don't know. I don't remember that.

Q. At the time the board of directors determined that it would purchase this property from the Goldsteins, was there an appraisal made for the corporation of this property? A. No.

Q. In 1953 or subsequently did the Boys Markets own other property on which its stores are erected?
[89]

A. In 1957 we acquired the land—

Q. Just yes or no is fine, if you please. Did they purchase any of this property from Joe and Lillian or both Joe and Lillian Goldstein? A. No.

Q. Did they purchase this property from any other members of the board of directors? A. No.

Q. Any stockholders? A. No.

Q. Any officers of the corporation?

A. No.

Q. So all of these, so any such properties other than this San Gabriel property that Boys Markets, Inc. has owned were purchased from third parties, not members of the corporation?

A. Right. Let me hear that question again, if you please. I want to be sure I answered that right.

The Court: Just read it back.

Mr. Greaves: I think I can make it simpler, your Honor.

The Court: All right.

Mr. Campbell: Your Honor told me not to interrupt, but may I correct something? If he misunderstood a question, which I think he obviously has, he should go

(Testimony of Edward L. Eddy.)

[90] back to the question so the record shows he clears that question. I will not interrupt again.

The Court: I did not want you not to interrupt on a proper prior objection. I just didn't want to have a lot of objections as to form. I would like to get the facts out here in the time that we have. Certainly you make any objection any time you want to.

Mr. Campbell: Very well.

Mr. Greaves: Would you restate or reread the question to the witness, please?

(The question was read.)

The Witness: Any property?

By Mr. Greaves:

Q. Any property on which Boys Markets' stores— or other real property—

A. Not on which the stores are located, no.

Q. Other property owned by the corporation, other real property, land owned by the corporation?

A. Yes.

Q. Yes, the Boys Markets have purchased other land from its—

A. Yes.

Q. From whom?

A. From Joe and Lillian Goldstein.

Q. From anyone else? [91]

A. Pardon?

Q. From any other members of the board of directors?

A. No.

Q. When did they purchase other land? When did the Boys Markets purchase this other land?

(Testimony of Edward L. Eddy.)

Mr. Campbell: I must object on the ground of materiality, if the Court please.

The Court: Well, I think he might be tying this into their theory. I will receive it at this time, and if it turns out that it can't be tied in any way or isn't tied in I will ignore it.

The Witness: It was a later date than this transaction here.

By Mr. Greaves:

Q. The following year?

A. I don't remember the year or the date.

Q. Was there more than one such purchase by the Boys Markets from Joe and Lillian Goldstein?

A. No.

Q. Just one? A. Yes.

Q. Do you recall anything about that transaction?

A. Well, it was a property that they owned. We bought it to add to our parking lot. [92]

Q. Do you know how long they had owned it?

A. Pardon?

Q. Do you know how long Joe and Lillian Goldstein had owned it prior to selling to to the Boys Markets, Incorporated?

A. No, I don't. I don't remember.

Q. But it was after the date of the San Gabriel property's purchase, this transaction?

A. It was after the date.

Q. Fine, thank you.

I now refer to Exhibit, Joint Exhibit No. 2-B, the lease between the Torley Land Company and the Boys Markets, the limited partnership, and have a special

(Testimony of Edward L. Eddy.)

reference therein to Paragraph 5 on Page 7 which provides in part—if counsel will not object to my paraphrasing—that the lessee—

Mr. Campbell: Pardon me. What page is that?

Mr. Greaves: Page 7, Paragraph 5. I have it on this copy. It provides that the lessee will have completed a building on this property and have it ready for occupancy on or before the 1st day of November, 1946.
By Mr. Greaves:

Q. Are you familiar with that provision in this lease, Mr. Eddy?

A. Well, I was at the time. I had forgotten it.
[93]

Q. Well, is your memory—would you like to read it?

A. Well, it's there. We must have had an extension on it because we didn't build until—

Q. Did you have an extension on it? Do you recall whether you had?

A. I don't recall, no.

Q. Do you recall not having had an extension?

A. No, I don't.

Q. You have no memory of this?

A. I would assume that we had an extension because of this limitation.

Q. But you do not have any memory as to whether or not there was an extension, is that correct, sir?

A. No, I have forgotten that altogether.

Q. All right, fine.

Mr. Greaves: I believe, your Honor, that concludes cross-examination.

(Testimony of Edward L. Eddy.)

The Court: Any redirect?

Mr. Campbell: No. May this witness be excused, your Honor? He has a funeral to attend.

The Witness: No, it is too late now. It was at 11:00 o'clock.

Mr. Greaves: I apologize, Mr. Eddy, that we had to keep you so long. [94]

The Court: Mr. Eddy, just one question I wanted to clear up.

You were asked about whether Mr. Goldstein was present at the time, at the meeting of April 28th when it is reported in the minutes that it has now been decided that Joe and Lillian Goldstein would buy this land and so on. You stated you didn't know whether they were present at the meeting or not. Now, your minutes reflect that both of them were present. In drafting these minutes did you simply, did you record who was actually present at a meeting or did you just record that all directors were present?

The Witness: I just said, your Honor, that we didn't have any formal meetings. They each were accumulation of meetings and partial meetings that ensued, that occurred during each quarter.

The Court: Were the minutes ever submitted to the other members of the board for approval?

The Witness: Yes, they were. We used to write them up in book form and submit them, but they all got a copy of them.

The Court: All right. That's all. You may be excused. May the witness be excused?

(Testimony of Edward L. Eddy.)

Mr. Greaves: He may be excused, your Honor, as far as respondent is concerned. [95]

The Witness: Through for the day?

The Court: Yes.

Mr. Campbell: You had better leave the courtroom in the event we need to call you back in rebuttal later so that we don't—

The Court: Yes, it would probably be better for you not to stay in the courtroom.

Mr. Campbell: So don't stay in the courtroom.

The Court: That would disqualify you from any other testimony.

The Witness: I didn't intend to.

Mr. Campbell: Good.

(Witness excused.)

Mr. Campbell: Mr. Hall, please.

Mr. Greaves: If the Court please, this might be a convenient time to break because there will be some—I don't know how extensive the direct will be but there will be—

The Court: Well, I would like to head on as fast as we can. Let's start out with the witness.

Mr. Greaves: Surely. [96]

Whereupon,

HAROLD MONROE HALL,

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Would you state your name and address, please?

The Witness: My name is Harold Monroe Hall. I

(Testimony of Harold Monroe Hall.)

live at 7373 Pyramid Place, Los Angeles 46, California.

The Clerk: Thank you.

Direct Examination

By Mr. Campbell:

Q. Mr. Hall, what is your business or occupation?

A. I am an appraiser and I am employed by the Marshall & Stevene Appraisal Engineers.

Q. How long have you been an appraiser?

A. Only been an active appraiser since 1947.

Mr. Greaves: I am sorry, I didn't hear that answer.

The Witness: Since 1947.

Mr. Greaves: You have been what?

The Witness: An active appraiser since 1947.

Mr. Greaves: I see.

The Witness: In other words, I have devoted practically all of those years to appraising. [97]

By Mr. Campbell:

Q. Now, going back a bit, what was your occupation prior to devoting all of your time to appraising?

A. I was an engineer with the County of Los Angeles from 1928 until 1957 when I retired.

Q. But I gather the latter portion of that employment was as an evaluation engineer, is that correct?

A. The last ten years. The last ten years of that was as evaluation engineer.

Q. Now in addition to your work with the County, have you had any specialized schooling in appraisal work?

A. Yes. I have taken courses at U.S.C. I took a

(Testimony of Harold Monroe Hall.)

course in property evaluation—the teacher there was Larry Sando—in 1948. Real estate appraisal course by Mr. Sando in 1951. Advanced real estate appraiser by Henry Babcock in 1952. At U.C.L.A. a course in geology which is indirectly connected with appraisal work in 1937. Investments in 1941, construction cost estimating in 1949.

Q. In connection with your work for the County of Los Angeles, the appraisal work, what was the nature of the appraisal work which you did for them?

A. My work with the County was completely in condemnation appraisal.

Q. So that it involved the appraisal of the fee or other interests in real property? [98]

A. Yes, sir.

Q. And real property of every type and nature, is that correct? A. Yes, sir.

Q. During the course of that activity for the County of Los Angeles and your subsequent activity since retiring from the service, have you heretofore appeared and been qualified as an expert appraiser in various courts? A. Yes, I have.

Q. Roughly on how many occasions during your career have you been qualified as an appraiser and permitted by the court to give testimony as an expert on the appraisal of real property?

A. I have actually appeared on nine occasions in trials of some duration, and I have appeared as an expert witness on property evaluations in many cases, possibly 20 or 25 default cases.

(Testimony of Harold Monroe Hall.)

Q. Yes. What professional associations are you a member of in connection with appraisal?

A. I am a member of the American Society of Appraisers. I was the vice president of the American Society of Appraisers in the Los Angeles Chapter the year of 1957 and '58. I am a member of the American Right-of-Way Association, and I am also on the panel of Fee Appraisers for the Federal Housing Authority.
[99]

Q. In that connection have you been engaged, since retiring from your public service with the County of Los Angeles, have you been engaged by the Federal Housing Authority to make appraisals?

A. Yes, sir.

Q. And now you state you are presently employed or associated with the firm of Marshall & Stevens, appraisal engineers. Is that correct?

A. Yes, that's correct.

Q. That is a national concern, as I understand?

A. Yes, it is.

Q. With offices in various cities?

A. Yes.

Q. Now, in connection with your work for Marshall & Stevens were you assigned the job of making an appraisal of property at the corner of Del Mar and San Gabriel Boulevards in the City of San Gabriel which property is presently occupied by a market known as the Boys Market?

A. That is correct, with one exception, sir. It is at Valley Boulevard in San Gabriel.

Q. Did I misstate the location?

(Testimony of Harold Monroe Hall.)

A. Yes, sir.

Q. At Valley Boulevard and Del Mar?

A. At Del Mar.

The Court: Yes. [100]

Mr. Greaves: The respondent has no objection to the qualifications of this individual, your Honor. I would like the record to so show.

Mr. Campbell: I wasn't going further. Thank you.

Mr. Greaves: Yes, sir.

By Mr. Campbell:

Q. During what period of time were you on that assignment?

A. I was assigned this job on the 11th day of January.

Q. Yes. And you just completed it, is that correct?

A. I have just completed it.

Q. Actually originally Mr. Vaughan of that concern was to testify here, isn't that correct?

A. I believe so. However, he is in the East.

Q. He is presently engaged in a trial, is he not?

A. Yes.

Q. Yes, all right. But the testimony you are about to give is based upon your personal examination, is that correct?

A. Completely, sir, yes.

Q. All right. As a matter of fact, Mr. Hall, you were familiar with that area for a number of years back, [101] were you not?

A. I was. I have been for some time. In approximately 1952 and 1953 I worked on the opening

(Testimony of Harold Monroe Hall.)

and widening of Del Mar and Garvey Boulevard south-
erly—it slips my mind—to Protero Grande Road.

Q. Yes. Involved was the enlargement and improve-
ment of Del Mar, one of the streets that forms the in-
tersection where the property we are interested in is lo-
cated, is that correct?

A. Yes.

The Court: Was that in connection with acquiring
right-of-ways?

The Witness: Yes, and the appraisal of those right-
of-ways.

By Mr. Campbell:

Q. Mr. Hall, will you state where that property is
located? That is to say, the nature of the two boulevards
at that intersection which form that intersec-
tion?

A. The major boulevards that form the intersection
of the property in question were Del Mar Avenue and
Valley Boulevard.

Q. Now, what is Valley Boulevard?

A. Pardon me?

Q. Will you describe Valley Boulevard, that is to
say, where it originates and where it goes, if you know?

[102]

A. Well, Valley Boulevard is a very well traveled
and very well known highway right-of-way passing
through Alhambra, the City of San Gabriel, and east-
erly. The main intersections about that point are New
Avenue to the west, then Delaware Avenue, and to the
east San Gabriel Boulevard, and that constitutes the
City of San Gabriel.

(Testimony of Harold Monroe Hall.)

Q. Now, based upon your observations, Valley Boulevard is one of the main east and west arteries through the San Gabriel Valley?

A. It is one of the main east-west arteries, and most important one.

Q. Most important one? When you say "most important," do you refer to a commercial standpoint?

A. From a commercial standpoint.

Q. Yes. I presume the freeway takes far more traffic, but—

A. Well, I mean it is a most important, not the most important. It is a very important through boulevard.

Q. What is the course of Del Mar Avenue?

A. Del Mar Avenue north of Valley Boulevard is more of a residential street. At Valley Boulevard it becomes a very important artery to the San Bernardino Freeway and southerly to Protero Grande, a distance of possibly four or five miles.

Q. Yes. Now, Mr. Hall, in the course of your [103] preliminary work for the purpose of determining value of that parcel of property, you were provided, were you not, and examined a policy of title insurance?

A. Yes, sir.

Mr. Campbell: A copy of which, your Honor, is attached to the petition herein and is referred to in the stipulation here. It is Exhibit B to the petition.

At this time in order to assist the Court I have here if I can lay my hand on it the original of that title policy. It is the original and for the assistance of the Court subsequently in examining the exhibits I will of-

(Testimony of Harold Monroe Hall.)

fer the original to be marked as an exhibit. Is that satisfactory, Mr. Greaves?

Mr. Greaves: Yes.

By Mr. Campbell:

Q. You examined that policy, did you not?

A. Yes, sir.

Q. And were you also provided with a copy of the lease, a lease dated the 27th day of September, 1945, between the Torley Land Company and the Boys Markets, a co-partnership? A. Yes, sir.

Q. Which said lease has heretofore been received in evidence as Exhibit 2-B?

A. Yes, sir, I received that. [104]

Q. And you examined that document as well?

A. Yes.

Q. Now in the course of your investigation did you make physical examination of the property?

A. I did.

Q. And did you make physical examination of the surrounding property? A. I did.

Q. Did you entertain—directing your attention specifically to the month of December, 1953—as to the matter of sale of either similar or nearby property at that time? A. Yes, sir.

Q. I think you said that you were generally familiar with this property in 1953 or with the area, is that correct? A. That's true.

Q. And what other type of investigation did you make?

A. I investigated the records of the County Assessor to determine the sales that were made at or about

(Testimony of Harold Monroe Hall.)

that time. In fact, I looked the records through from 1942 up until sometime after 1953.

Q. Yes.

A. In order to determine where those sales were, what the sales were, and tried to determine sales price [105] at which those properties changed hands.

Q. Yes. And you were given as your assignment, were you not, to determine or to arrive at an opinion based upon proper appraisal procedures of the fair market value of that property as of December 31st, 1953?

A. Yes, sir.

Q. And did you form an opinion on that subject?

A. I did form an opinion on that subject.

Q. And what amount did you find to be the fair market value as of that date?

A. I found the fair market value of the subject property as of December of 1953 to be \$79,600.00. I would like to explain.

Q. Based upon your experience in the past as an appraiser and based upon your examination of the documents and the various examinations which you made, in your opinion would the price of \$75,000.00 paid by Boys Markets have been a fair price for the acquisition of the fee of that land? A. It would.

Mr. Campbell: You may cross-examine.

Mr. Greaves: Just a moment, please.

Cross-Examination

By Mr. Greaves:

Q. How long did you spend in this appraisal?

[106]

(Testimony of Harold Monroe Hall.)

A. I worked on it constantly since the 11th of this month.

Q. That is, eight hours a day?

A. Yes, sir, and many hours in the evening at night.

Q. Now, you stated, I believe, that you compared sales of some of the properties? A. Yes, sir.

Q. In that area? A. Yes, sir.

Q. During 1953?

A. Sales that occurred in 1953.

Q. As recorded? A. Yes, sir.

Q. In the local Assessor's office?

A. Yes, sir.

Q. Were there many sales in December of 1953?

A. I picked up some 20 for which I considered to be the most valuable to this court.

Q. Comparable properties?

A. Which I considered to be comparable.

Q. Were any of them located on Valley Boulevard?

A. Yes, sir.

Q. Can you tell the Court the approximate distance from the intersection of Valley and Del Mar of the nearest one of these other properties sold? [107]

A. On Del Mar?

Q. No, on Valley nearest to Del Mar either east or west.

A. Yes, I found two pieces that were adjacent, one abutting the property on the east.

The Court: Facing on Valley?

The Witness: Facing on Valley, and another parcel right next to that adjacent to the first one of which

(Testimony of Harold Monroe Hall.)

I spoke which originally had been one piece of property, which was then broken into two pieces of property, which was then collected as one piece of property again and then sold.

The Court: It was sold in December of '53?

Mr. Campbell: I don't think he heard your question.

The Court said that was in December of 1953?

The Witness: I believe so. I was just going to look through the record to find the exact date, sir.

Pardon me. That last and final sale was in January of 1948. Then I have a sale—

By Mr. Greaves:

Q. I wonder if I might ask you, sir, what you are referring to there.

A. I am referring to supporting data, a map which I made up to show the location and relative size of the [108] properties involved.

Mr. Greaves: Does counsel intend to submit this into evidence in this case?

Mr. Campbell: I do not think it is necessary. If you want it in—

Mr. Greaves: I thought it might be helpful to the Court. I was just curious as to what this was.

The Court: Mr. Greaves, is the Government questioning the fair market value as of the date of the transfer from Mr. Goldstein to the corporation?

Mr. Greaves: The Government is attempting to assess what the fair market value would be, or determine, rather, what it would be.

The Court: You have charged \$40,000.00 as additional income which is a difference between the \$35,-

(Testimony of Harold Monroe Hall.)

000.00 Mr. Goldstein paid or had invested in it, and a sale price of \$75,000.00. That would seem to be an acceptance of \$75,000.00 as a fair market value of the property on the day it was transferred to the corporation. I am just curious. Are you really contesting that value?

Mr. Greaves: We are from one point of view, your Honor. Under our first theory of this case in the other estimation the fair market value is what a willing purchaser pays for it, and what a willing buyer sells it for, which was a transaction that happened between Mr. [109] Torley and Mr. Goldstein in June of 1952. We do not know what would occur between June and December that would increase the fair market value.

The Court: If you are attempting to prove that the fair market value was \$35,000.00—

Mr. Greaves: We are attempting to determine what it was, not \$35,000.00 or \$75,000.00.

The Court: All right, proceed with the questioning.
By Mr. Greaves:

Q. Now, you say this piece of adjacent property was sold in 1948? A. In '48.

Q. Were there other sales in December of '53 that you have noted?

A. I have a sale of the southwest corner of Valley Boulevard and San Gabriel Boulevard which was a distance of—

Q. Just approximately would be fine.

A. Half a mile.

Q. About a mile?

A. Half a mile.

(Testimony of Harold Monroe Hall.)

Q. Half a mile?

A. Which was sold in January of 1953.

Q. Is that property of approximately comparable size? [110]

A. In size it is not of comparable size.

Q. Would you say that that intersection is more or less important as a commercial intersection than is the intersection of Valley Boulevard and Del Mar?

A. At that time it was considerably more important than the intersection of Del Mar because Del Mar was in such a deplorable condition because of the street, lack of street improvement south from Valley Boulevard. I have others; a sale in July, 1953, the southeast corner of Valley Boulevard and Lafayette Street.

Q. And where is Lafayette Street?

A. Lafayette Street is practically midway between the subject property and San Gabriel Boulevard.

Q. And how far?

A. approximately a quarter of a mile, and that sale at that time, that particular area was not developed commercially, and of course I am taking that into account.

The Court: When was that sale?

The Witness: That was in July of 1953.

By Mr. Greaves:

Q. July? I was just trying to ascertain whether there were any other sales in that area at that same time.

A. Yes, I have sales adjacent to the property south, too, on Del Mar Avenue.

(Testimony of Harold Monroe Hall.)

Q. You say sales adjacent to this property? [111]

A. Adjacent to this property on the south, adjacent to and abutting the property on the south, which I used to determine my opinion of the fair market value.

Q. And part of your appraisal, part of your opinion as to the fair market value of this property is based on the respective sales of these properties you have just mentioned? A. Yes, sir.

Q. Did they generally sell for more or less than this property, the so-called San Gabriel property we are discussing in this case?

A. This property is more permanently located than any of these others, and therefore if I might say that this is not a sale which is being considered here, it is merely establishing what the property would have sold for had it been offered on the open market. Under my usage of the definition the market value is the highest price which the property will bring when exposed on the open market to find a buyer after a reasonable time, knowing all the uses to which the property is adaptable and is capable of being used. That is the highest price.

Q. Did I understand from the direct examination prior to making this, prior to the commencement of this appraisal, you had occasion to see both the lease that was executed between the Boys Markets, the limited [112] partnership in 1945, and the Torley Land Company, as well as the title insurance policy on this property?

A. That was given to me in connection with the work which I was to do.

(Testimony of Harold Monroe Hall.)

Q. Now, are you aware of the provision in the lease for a 50-year term? A. Yes, sir.

Q. Commencing in November or on November 1st, 1945? A. Yes, sir.

Q. Would the fact, would this fact, that is, a long term lease on a piece of property, have any effect on its fair market value generally? A. Indeed.

Q. Would there be any effect, would the effect—and I will go into what this might be—I want to establish the line first—would the effect be greater on individuals who are not parties to the lease than on individuals who were in particular the lessee?

A. The lessee and the lessor would be—

Q. In particular the lessee?

A. The lessee would be very much involved and very particularly from a standpoint of value at that time.

Q. Now, in this particular situation, that is the land involved in this case and the parties to it, and any sales transaction, would there have been any effect on any [113] of these parties by virtue of the fact that there was a 50-year lease on this property?

A. Yes, sir.

Q. Would it have had less value to a third party than to the lessee? Would this land have had less value to a third party than to a lessee?

A. It would. Let us put it this way, if I may answer it this way.

Q. Surely.

A. First of all the property has to be appraised, and a determination made as to what the fair market

(Testimony of Harold Monroe Hall.)

value of the property would be if it were exposed on the open market.

Q. Yes, sir.

A. From that information can be gained, the full knowledge of the value or the knowledge of the full value to the lessor and the value to the lessee. In a case of this sort where a lease has been made under very favorable terms over a long period of time, the lessee has a package which he can market. It is a tangible asset. The determination of the value of the lessee's interest can be used to loan money. If the lessee is strong and in a favorable credit position the bank is willing to loan up to 100 percent on the established value of the leased fee after a determination for market value has been made by a [114] competent appraiser.

The Court: You mean 100 percent of the fair market value of the fee unencumbered?

The Witness: Well, the lessee's collateral which is put up.

The Court: And then the amount that they would be willing to loan would be what the fair market value of the lease is?

The Witness: Of the leased fee, yes, sir.

The Court: I see.

Mr. Campbell: I do not quite understand.

The Witness: That portion which belongs to the lessor. The ownership of property is the ownership of a bundle of rights, and when an individual or a corporation leases a piece of property, that bundle of rights passes almost entirely to them. They can sublease. This is a master lease.

(Testimony of Harold Monroe Hall.)

By Mr. Greaves:

Q. Before you go on, are you a lawyer?

A. No, sir, I am sorry. This is just my training as an appraiser. But the Boys Markets had something that was marketable at that time because of the increase in value of the land. They were in a position to sublease it to a very fine advantage to them. Is that the answer to your question? [115]

Q. I am not quite sure myself. I will have to wait until I get the transcript and see.

A. They were in a very favorable position.

Q. The lessee was in a very favorable position?

A. The lessee was in a very favorable position.

Q. Who was the lessee under that lease?

Mr. Campbell: I think that calls for a legal conclusion, your Honor, and I object to it.

The Court: Well, the lease I believe is in the record.

Mr. Greaves: Right.

By Mr. Greaves:

Q. Is it possible for an appraiser to go out and look at a piece of land with an improvement on it and completely detach himself from the value of this improvement in attempting to value the land?

A. It isn't easy, but it can be done. At least you do it to the best of your ability, and that of course is based on your experience. Having known a piece of land, when it was vacant, and then later coming in contact with the property after it was improved, and knowing the conditions which prevailed in the meantime, you are in a much more favorable position to do that than you would be if it was something cold to you.

(Testimony of Harold Monroe Hall.)

Q. Did you state on direct examination that you [116] were personally familiar with this area during the month of December of 1953?

A. I couldn't say that, no.

Q. Were you generally familiar with this area in 1953?

A. I was generally familiar with the area in 1953 having been closely associated with the improvement of Del Mar Avenue during those times of '52 and '53.

Q. Improvement on the south of this property?

A. Which was south of this property. My colleague and one who I had trained in the work with the County actually did the appraisal for Garvey Boulevard north-erly to the San Gabriel City Line, but we were in very close connection.

Q. What is the amount of commercial development of this area, that is the area immediately surrounding the intersection at Del Mar Avenue and Valley Boulevard in the latter part of 1953?

A. The Market Basket building was well established on the northeast corner of Del Mar Avenue and Valley Boulevard. The actual corner of Del-Mar Avenue and Valley Boulevard contained a service station and a dry cleaning plant on the southwest corner. Did I say "northeast" for Market Basket?

Q. Yes, you did.

A. I am sorry, it is the northwest corner, and [117] a service station and cleaning plant also occupied part of that property which at that time was owned by the Market Basket people. On the southwest corner was a service station and a new eating place extending to the

(Testimony of Harold Monroe Hall.)

west, real estate offices, and the Boys Markets had built at the southeast corner. I believe the property at that time adjacent to it, to the east, was vacant, and a row of buildings had been constructed. This was many years back on the northeast corner.

Mr. Greaves: I think that's all the cross-examination.

Mr. Campbell: Nothing further.

The Court: Is there any reason that this witness should stay around?

Mr. Greaves: No.

Mr. Campbell: No, he may be excused.

The Court: Thank you, Mr. Hall.

The Witness: Thank you.

(Witness excused.)

The Court: We will recess until 2:00 o'clock.

(Whereupon, at 12:45 o'clock, p.m. a recess was taken until 2:00 o'clock, p.m. of the same day.)

[118]

Afternoon Session

2:00 o'clock, p.m.

Mr. Campbell: Would you call Edward Goldstein?

If the Court please, I found this document I was looking for. It slipped off on the floor. It is the policy of title insurance. I will ask the Clerk to mark it so the Court can have it rather than a photostatic copy of it.

The Court: All right.

Whereupon,

EDWARD GOLDSTEIN,

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Would you state your name and your address, please?

The Witness: Edward Goldstein, 85 Fremont Place, Los Angeles.

Mr. Greaves: May the record also show that this is a witness that the Government was forced to subpoena in this case?

Mr. Campbell: Now, just a minute. I am going to object to the statement in this record that the Government was forced to subpoena anybody. [119]

Direct Examination

By Mr. Campbell:

Q. Mr. Witness, were you ever requested by the Government to appear other than by the service of a subpoena? A. No.

Q. Has the Government ever up to this time ever discussed the facts of this case with you?

A. No.

Q. Or has anybody attempted to discuss them with you and you have refused to discuss them?

A. No.

The Court: The record will show that this is a witness subpoenaed by the Government.

Mr. Campbell: Yes, your Honor. I have no objection to that. Just to the word "forced."

The Court: We will strike the word "forced."

(Testimony of Edward Goldstein.)

Mr. Campbell: At this time I will offer the policy of the title insurance which is the original, a copy of which appears in the petition, and ask to have it marked in evidence.

The Court: Do you have any objection to receiving that?

Mr. Campbell: It is referred to in the stipulation, your Honor, as well. [120]

The Court: You have no objection?

Mr. Greaves: No objection.

The Court: Petitioners' No. 6.

The Clerk: No. 6, your Honor.

The Court: Will be received in evidence.

(Petitioners' Exhibit No. 6 was marked for identification and received in evidence.)

By Mr. Campbell:

Q. What is your business or occupation, Mr. Goldstein?

A. Officer of the Boys Markets.

Q. What office do you hold?

A. Vice president.

Q. And how long have you been a vice president of the Boys Markets?

A. Roughly I think it's about 12 years.

Q. Would it be since the time it became a corporation?

A. Yes.

Q. And what are your duties in the corporation?

A. I am a produce supervisor.

Q. Will you describe what you mean by produce supervisor?

A. I go around to the stores, supervise the produce

(Testimony of Edward Goldstein.)

departments, the personnel, see that the merchandise is [121] kept fresh, clean.

Q. Do you hire and fire the personnel in the produce departments? A. Yes.

Q. And do you do the buying?

A. No.

Q. Who does the buying?

A. Max, Max Goldstein.

Q. One of your other brothers?

A. Yes.

Q. Does this job of supervising the produce portion of the markets occupy all of your time? I mean to say, is it a full time job?

A. It's a full time job.

Q. How many markets are you operating at this time? A. Eight.

Q. Eight markets. Now, was that your position also during the year 1953? A. Yes.

Q. According to the stipulation on file here, Mr. Goldstein, you were the owner of 1,294 shares of capital stock of Boys Markets or were in 1953, is that correct? A. Yes.

Q. You are also presently the owner of that number of shares? [122]

A. Yes.

Q. Now, during the year 1953 you were also a director of the corporation, were you not?

A. Yes.

Q. Did you occupy an office in the general offices of the corporation? A. Yes.

Q. Were you there daily during that period of time back in 1953? A. Yes.

(Testimony of Edward Goldstein.)

Q. And will you state what the custom was as among you and your other brothers and Mr. Eddy relative to discussions of the policies of the Boys Markets?

Would you discuss with them, talk among yourselves about what was to be done on various matters?

A. At all times when we were together we always did.

Q. Let me ask you this. Among the five brothers, which is the older?

A. Joe Goldstein.

Q. Joe is the oldest? Now how do you come in order after that?

A. Max, myself, Bernard and Albert.

Q. Albert is a brother who is no longer connected with the concern, is that correct?

A. That's right. [123]

Q. Is he now connected with a rival market chain?

A. Yes.

Q. The Food Giant, I believe it is called?

A. The Food Giant.

Q. But in 1953 he was employed by the corporation, is that correct? A. Yes.

Q. Now, do you recall in 1953 discussions among yourselves relative to the acquisition of the—I refer now to the early part of 1953—relative to any conversations among yourselves relative to the acquisition of the land located on Valley Boulevard in San Gabriel where your market out there is located?

A. Yes, I remember.

Q. And in that connection do you recall whether

(Testimony of Edward Goldstein.)

or not any conversations were had concerning the possibility of acquiring it by trade?

A. Quite a bit.

Q. And what position did you adopt in that matter?

A. I didn't want to have any part of it.

Q. Why?

A. Because it had to do with Las Vegas.

Q. Well, what was your antipathy to Las Vegas?

A. I beg your pardon?

Q. What was your animosity, what was your feeling [124] about Las Vegas?

A. I have been embarrassed up there too many times financially. I didn't want to have any part of it.

Q. You have had some previous unfortunate experiences, I take it? A. Sadly.

Q. Did you so express yourself to the other brothers? A. I did.

Q. And did you oppose any proposal as to the purchasing of land up there for the purpose of exchanging for the San Gabriel property?

A. Yes, I opposed it if we had to do it that way.

Q. Let me ask you this. Was it your understanding at that time that the only manner in which that property could be acquired at that time would be exchange of property?

Mr. Greaves: Objected to. These questions are tending to be leading.

Mr. Campbell: It is leading. I am trying to hurry it along if I can.

(Testimony of Edward Goldstein.)

The Court: I think I will sustain the objection to that. That was quite leading.

Mr. Campbell: All right.

By Mr. Campbell:

Q. How did you understand the acquisition of the [125] San Gabriel property was offered to you?

A. The way it was offered, that it had to do with some apartment houses in Las Vegas for us to get the fee to the land at Del Mar. As long as it involved anything in Las Vegas I didn't want to have anything to do with it.

Q. I see. And you so expressed yourself, is that correct? A. I did.

Q. Now, I call your attention to the minutes which have been read here into the record relative to the date of April 28, 1953 in which minutes it is stated, "It has now been decided that Joe Goldstein and Lillian Goldstein would buy this land—" referring to the San Gabriel property "—as their private property and they may at sometime in the future sell to the Boys Markets."

Did you participate in that decision?

A. I didn't hear you.

Q. Did you take part in the decision that the Boys Markets Corporation would not buy it, but that Joe and Lillian Goldstein might buy it as their own property? A. Yes.

Q. And I gather it was for the reasons that you have just stated? A. That's right.

Mr. Campbell: You may cross-examine. Pardon me. [126] I have made the examination purposely short

(Testimony of Edward Goldstein.)

and to this one point with a mind to expediting it, and I would like to confine the cross, unless the Government wants to take him as their own witness, to the matters gone into on the direct examination.

The Court: I understand.

Mr. Greaves: Do I understand, Mr. Campbell, that you have taken this witness as your witness in this case, this gentleman?

Mr. Campbell: This gentleman for the testimony that he has just given.

Cross-Examination

By Mr. Greaves:

Q. Mr. Goldstein, I believe you testified on direct examination that you had, as a member of the board of directors of the Boys Markets, Incorporated, informal meetings with other members relative to the San Gabriel property.

A. I didn't get the first part of your question.

Q. Did you as a member of the board of directors of Boys Markets, Inc. have informal meetings with other members of the board of directors relative to the purchase of the San Gabriel property?

A. Yes.

Q. Do you know whether minutes were kept in these meetings? [127]

A. In these meetings?

Q. These informal meetings which you had in which you discussed the purchase.

A. Minutes were kept, yes.

Q. For every meeting of the board of directors in

(Testimony of Edward Goldstein.)

which the San Gabriel property's purchase was discussed, minutes were kept?

A. I don't know if it was every one. I don't remember if at all meetings minutes were kept.

Q. And you did not take part in any meeting with any other member or any other members of the board of directors that did not have minutes kept by someone present at that time?

Mr. Campbell: Now, just a minute.

The Witness: I don't understand that.

Mr. Campbell: Pardon me. I object to the question in that form. That's a confusing question. That is an extremely confusing and compound question. "You did not meet with other members of the board in which minutes were not kept"? Now, these people were all brothers. They were meeting daily according to the testimony here. If counsel is referring to the board meetings as such, that is one matter, but simply a meeting with other members of the board does not so connote.

The Court: Yes, I think you had better clarify [128] it and let the witness know exactly what you are talking about.

By Mr. Greaves:

Q. Did you have informal discussions with other members of the board of directors of the Boys Markets, Incorporated at any time? A. Yes.

Q. At any of these meetings to which you have just testified to did you discuss or did others in your presence of the board of directors of the Boys Mar-

(Testimony of Edward Goldstein.)

kets, Incorporated discuss the purchase of a parcel of property in San Gabriel? A. Yes, we did.

Q. To your knowledge at any of these meetings or at all of these meetings were minutes kept?

A. Yes.

Q. Did you take part in any such discussion with other members of the board of directors relative to the purchase of the San Gabriel property in which minutes were not kept?

A. I still don't understand. Our meetings were informal. We always read the minutes.

Q. Minutes were kept whether the meetings were informal or formal? A. Yes. [129]

Mr. Greaves: Is this the book of minutes?

Mr. Campbell: Yes.

By Mr. Greaves:

Q. Do you know who kept these minutes?

A. Mr. Eddy.

Q. Now, there was a meeting of the board of directors on the 27th day of January, 1953. Did you attend that meeting?

A. I can't remember the exact date.

Q. Well, this was a meeting in which it was stated by the president that, "It might be possible to purchase the land now under lease on which we built the San Gabriel market, and the purchase of this land would enable us to procure a loan on the property and increase our working capital." This property being the San Gabriel property. A. Yes.

Q. There was a meeting also held on April 28, 1953 at which it was stated in effect, and I am read-

(Testimony of Edward Goldstein.)

ing from the minutes, "At a previous meeting there was a discussion about the possibility of purchasing the land on which the San Gabriel market was located. It has now been decided that Joe Goldstein and Lillian Goldstein would buy this land as their private property and they may at some time in the future sell it to the Boys Markets." Were you at that meeting? [130]

A. Yes, sir.

Q. Were there any other meetings of the board of directors during the early part of 1953 in which the matter of the Boys Markets or Joe Goldstein's purchase of this San Gabriel property was discussed?

A. I just can't remember. We talked about it quite often. I just can't remember.

Q. Now, you stated on direct examination that you wanted no part of the Las Vegas property which you would have to secure in order to trade with the Torley Land Company?

A. Yes, sir.

Q. Why did you want no part of the Las Vegas property?

A. Just that I had been up to Las Vegas and I just don't care to have anything to do with Las Vegas for personal reasons.

Q. Well, would you have had to go to Las Vegas if the corporation purchased property in Las Vegas?

A. We didn't want to have anything to do with Las Vegas. We had very unpleasant things happen there.

Q. Mr. Torley lives in Las Vegas and you didn't want to have anything to do with him?

Mr. Campbell: Now, I suggest that is argumenta-

(Testimony of Edward Goldstein.)

tive, if the Court please. I object to that question in that form. [131]

The Court: Yes. I think I will sustain the objection to the question in that form. If you want to ask a direct question about Mr. Torley, it may be admissible.

By Mr. Greaves:

Q. What is your position in the Boys Markets, Mr. Goldstein? A. Vice president.

Q. You are also on the board of directors?

A. Yes, sir.

Q. Do you have a title on the board of directors?

A. I beg your pardon?

Q. Do you have a title on the board of directors?

A. A title?

Q. Yes, sir. A. Yes.

Q. What is that title?

A. Vice president.

Q. Of the board of directors of the Boys Markets, Incorporated? A. Yes.

Q. How did you acquire your stock in the Boys Markets? A. I didn't hear.

Mr. Campbell: Objected to as immaterial.

Mr. Greaves: I believe you went into that on [132] direct examination and I would just like to get an answer from this witness on that.

Mr. Campbell: No, I did not. I asked him how many shares he had.

The Court: Well, you asked questions about whether he was a stockholder. I think that this may be material. I will overrule the objection.

(Testimony of Edward Goldstein.)

Mr. Campbell: Very well. You may answer the question.

The Witness: What is the question again?

By Mr. Greaves:

Q. How did you acquire your stock in the Boys Markets, Inc.?

A. Through bonuses, dividends,—not dividends—bonuses.

Q. Did you purchase any of it?

A. Did I purchase any of it? With my bonuses, yes.

Q. Did you purchase any from anyone else other than the company? A. No.

Q. That is from Joe Goldstein or from other stockholders of the corporation?

A. From the Boys Markets.

Q. From no members, no stockholders of the Boys Markets did you purchase stock? [133]

A. I don't even remember.

Q. Did you acquire any stock from the Boys Markets as a result of the transfer of assets of the limited partnership to the Boys Markets, Incorporated?

A. I can't remember that. I think it was just through bonuses.

Q. Now, as an officer and director and shareholder of this corporation you are familiar with the transaction concerning the San Gabriel property, are you not?

A. A little bit. Mr. Eddy and Joe, Mr. Eddy handled most of it. My other duties kept me busy. That was my part of it.

(Testimony of Edward Goldstein.)

Q. Did you as a director of this corporation authorize or agree to allow Joe Goldstein and Lillian Goldstein to sell this property to the corporation?

Mr. Campbell: Now, just a minute. Objected to, if the Court please.

Mr. Greaves: It is set forth in the minutes of the corporation dated April 28, 1953.

The Court: I think the way the question was stated "Did you agree or authorize the corporation to buy from Joe Goldstein as stated in the minutes"—

Mr. Greaves: I believe that was substantially what I said.

The Court: I don't believe it is stated that [134] way in the minutes as I recall.

Mr. Greaves: Strike that, and let me rephrase it, if I may.

By Mr. Greaves:

Q. Did you as a member of the board of directors acquiesce— A. What?

Q. Did you as a member of the board of directors agree that Joe Goldstein and Lillian Goldstein would in the future be able to sell the San-Gabriel property to the corporation?

Mr. Campbell: Just a minute. That's objected to as also misstating the—

The Court: Yes, I think you had better read from the minutes, if you would, please, if you are referring to this particular minute.

By Mr. Greaves:

Q. I am reading from the minutes of the Boys Markets, Incorporated dated April 28, 1953. I will

(Testimony of Edward Goldstein.)

read a sentence from these minutes and ask you then whether or not you agree with the statement herein made. "It has now been decided that Joe Goldstein and Lillian Goldstein would buy this land as their private property, and that they may at sometime in the future sell it to the Boys Markets." [135]

A. Yes.

Q. You agree? A. Yes.

Q. To that as one of the directors of the Boys Markets? A. Yes.

Q. As a director of the Boys Markets did you have any contact with the seller of this property?

A. No.

Q. Who did? A. Mr. Eddy.

Q. Exclusively to your knowledge?

A. No, not to my knowledge.

Mr. Campbell: Just a minute. That's calling for his conclusion.

The Court: You didn't let him finish his answer in the first place. He was about to add another name, I believe—weren't you, Mr. Witness?

The Witness: Yes.

The Court: Just complete your answer to the first question.

The Witness: Mr. Eddy and Joe Goldstein. That was their duties.

By Mr. Greaves:

Q. And now as an officer of the corporation I [136] believe you stated your duties were as a produce buyer or manager? A. Supervisor.

(Testimony of Edward Goldstein.)

Q. Supervisor. As a director of the corporation did you have any duties?

Mr. Campbell: I object to that if the Court please. The duties are laid on him by the law and by the by-laws of the corporation.

The Court: Well, I think it is possible that a board may at times assign particular duties to a particular member of the board. I will overrule the objection and let him answer it.

The Witness: No, I had no duties that way.

By Mr. Greaves:

Q. No duties other than those imposed upon you by the law and by the by-laws of the corporation?

A. Yes.

Q. Are you familiar with what those duties amount to?

Mr. Campbell: Objected to as immaterial.

The Court: What is the purpose of this question?

Mr. Greaves: As an officer of this corporation, your Honor, I believe one of this witness' duties were to protect the corporation generally. I therefore would ask him why he did not or why he himself did not or why he did not authorize others. [137]

The Court: You ask him if he is familiar with the duties that are imposed upon him by the laws and by-laws. That's a pretty broad question. I think I would be here all afternoon if he knew.

Mr. Campbell: It seems to me all he can say is what he did. Then it is for the Court to measure whether what he did was proper or improper, and he has previously answered counsel and told him what he did, the

(Testimony of Edward Goldstein.)

position he took. It is not a matter for his determination whether that was proper or improper. It would be argumentative to proceed on that line.

The Court: Well, Mr. Witness, can you answer the question that was asked yes or no? The question was,—

The Witness: I wouldn't want to answer it yes or no.

The Court: Well, I think that is your answer, Mr. Greaves.

Mr. Greaves: I didn't hear that answer.

The Court: He said he wouldn't want to answer it yes or no.

By Mr. Greaves:

Q. At the time you learned of the negotiations between the Torley Land Company and individual members of your corporation did you know that the corporation could have purchased this property for \$35,000.00? [138]

A. I—

Mr. Campbell: Just a minute. Pardon me. I do not think that is proper cross-examination and it is assuming a fact not in evidence, if the Court please.

The Court: Well, he is asking a question whether he knew the corporation could purchase it for \$35,000.00.

Mr. Campbell: Well, that question assumes that fact to have been established that the corporation could purchase it for \$35,000.00.

The Court: Well, it may or may not, depending on

(Testimony of Edward Goldstein.)

how you interpret the question. I do not think it necessarily assumes anything.

You may answer the question.

The Witness: I can't remember that.

By Mr. Greaves:

Q. In December of 1953 did you as a member of the board of directors of the Boys Markets, Incorporated vote in favor of your corporation purchasing this property from Mr. and Mrs. Joe Goldstein?

A. Yes.

Q. What reasons did you as a director have for wishing to purchase that property for your corporation at that time?

Mr. Campbell: Objected to as immaterial, not [139] within the issues here, calling for his conclusion.

The Court: I will overrule the objection.

You may answer. Do you remember the question?

The Witness: Yes, I do. The reason for acquiring the property is that so that we could borrow money on it.

By Mr. Greaves:

Q. Wouldn't that same reason have existed in June or earlier in 1953?

Mr. Campbell: Objected to as argumentative, if the Court please.

The Court: Overruled.

The Witness: I would have to state what I said before.

By Mr. Greaves:

Q. I don't know what that is, sir.

(Testimony of Edward Goldstein.)

A. If it had anything to do with Las Vegas I wasn't in favor of it.

Q. Did you as a director of the corporation know at the time you authorized the purchase of the San Gabriel property from Mr. and Mrs. Joe Goldstein that your corporation was a lessee of this property? You don't know that?

A. I don't remember that exactly. Yes. I can't remember that.

Q. Did your corporation lease this property from [140] the Torley Land Company?

A. There is a lot of these things that I just don't remember. Mr. Eddy handled them. It was Torley. I don't know the proper name. It was Torley.

Q. Did you know that your corporation leased this property from someone? A. Yes.

Q. Did you know that your corporation's lease still had an unexpired period of 42 years or 41 years and 10 months as of December 1, 1953?

A. I don't remember.

Mr. Campbell: I didn't get that answer.

(The answer was read.)

The Witness: I don't remember.

By Mr. Greaves:

Q. Do you know how much rent your corporation paid as lessor under the lease? A. No.

The Court: Mr. Witness, will you speak up a little louder in your answers, please?

The Witness: Yes.

(Testimony of Edward Goldstein.)

By Mr. Greaves:

Q. Mr. Goldstein, I show you Joint Exhibit No. 2-B in this case which is—rather, would you tell me what this is and what this is titled? [141]

A. Lease.

Q. Between whom?

A. Torley Land Company and the Boys Markets.

Q. The Boys Markets, a limited partnership?

A. Yes.

Q. I wonder if you would tell me whose signature appears on this lease signing on behalf of the lessee, the Boys Markets?

A. Joe Goldstein, Edward Goldstein, Joe Goldstein, his attorney, Joe Goldstein as trustee for Max Goldstein.

Q. Did you sign this? A. Yes, sir.

Q. That's your signature? A. Yes.

Q. And you knew nothing about the lease or the terms therein? A. I can't—

Mr. Campbell: Just a minute. That's assuming a fact he did not say. He said he doesn't remember now. He doesn't say that he didn't know at that time.

The Court: It is a double question. Why don't you ask him one at a time.

Mr. Greaves: All right, sir.

By Mr. Greaves:

Q. Do you know at this time now that I have refreshed [142] your memory by showing you the lease what the original term of that lease was?

A. We discussed the lease. I can't remember those

(Testimony of Edward Goldstein.)

things. We have a man that takes care of those things, Mr. Eddy, who reads them, checks them.

Q. Pardon me? A. And checks them.

Q. At the time you voted in favor—at the time you as a director of your corporation voted in favor of its acquisition of the San Gabriel property from Joe Goldstein and Lillian Goldstein—strike that.

At the meeting in which it was voted that the Boys Markets, Inc. would purchase the San Gabriel property from Joe Goldstein and Lillian Goldstein was the matter of this lease discussed to your knowledge?

A. I just can't remember.

Q. Did you know how much Joe and Lillian Goldstein paid for the property?

A. I did at the time. I have to say again I can't remember those figures.

Q. When did you know that you were going to become a witness in this case? A. When?

Q. That's right.

A. When I was subpoenaed. [143]

Q. Have you talked to anyone since that time about this case? A. The attorney.

Q. Did you appear in his office willingly?

A. Yes.

Q. Did you do so out of friendship for the petitioners?

Mr. Campbell: I object to this line of questioning, your Honor. I see no purpose in it. We are wasting the time of the record.

The Court: I do not think it is going to be very material, but I will let him answer this question.

(Testimony of Edward Goldstein.)

The Witness: I didn't hear it.

By Mr. Greaves:

Q. Did you appear at Mr. Campbell's office out of friendship for the taxpayers, Mr. and Mrs. Goldstein?

A. Well, I can't answer as a business. Friendship, yes.

Q. And were you present—pardon me, strike that. Was this case discussed at that time?

A. Yes.

Q. Was the amount that Joe and Lillian Goldstein paid for this property also discussed at that time?

Mr. Campbell: I am going to object, if the Court please. This is entirely a collateral matter. If [144] counsel is of the opinion that this witness' testimony has been in some way tampered with, let him ask the direct impeaching question.

Mr. Greaves: I am attempting to get this, to jog this witness' memory with respect to the amount.

Mr. Campbell: As counsel I have the right to talk to the witnesses, and he has the right to come to my office and discuss the case and all of the details. And the discussion that took place there is not evidentiary, unless it is for the purpose of impeaching his testimony as to what the true facts are.

The Court: I agree with that. However, Mr. Greaves said the purpose of this line of questioning was to refresh the witness recollection. I think that that's permissible for that purpose.

Mr. Campbell: Except Mr. Greaves wasn't there, your Honor.

(Testimony of Edward Goldstein.)

The Court: Well, the witness has said that he was there.

Mr. Campbell: Yes.

The Court: And it was discussed.

I will overrule the objection. Do you want to rephrase the question or ask it again, please?

By Mr. Greaves:

Q. Now,— [145]

Mr. Greaves: I would like it read, if it please the Court.

The Court: Will you read the question back?

(The question was read.)

The Witness: At the attorney's office?

By Mr. Greaves:

Q. Yes. A. No.

Q. It was not? A. No.

Q. If I were to tell you that he paid \$35,000.00 for this property— A. Sir?

Q. If I were to tell you at this time that he paid \$35,000.00 for this property, would that refresh your recollection?

Mr. Campbell: Well, just a minute. If counsel were to tell him that that wouldn't be the situation because the stipulation shows that other property was exchanged for it—

Mr. Greaves: I will stand corrected on that, your Honor. Thank you, Mr. Campbell.

By Mr. Greaves:

Q. Did you know the value of the property exchanged?

(Testimony of Edward Goldstein.)

Mr. Campbell: That's objected to as calling [146] for his conclusion. He can ask him if he wants, how much the Goldsteins paid for the property in exchange.

The Court: Yes. I think the value of that Las Vegas property hasn't come into it yet.

By Mr. Greaves:

Q. Do you know the amount the Goldsteins paid for certain property and improvements thereon in Las Vegas in exchange for this San Gabriel property?

A. No, I don't.

Q. Do you know how much the corporation paid to the Goldsteins for the San Gabriel property?

A. I can't remember the figures.

Q. Have you ever sold any property to the Boys Markets, Inc.?

A. Have I? No.

Q. In your personal capacity, Mr. Goldstein?

A. No.

Q. Have other members of the board of directors?

Mr. Campbell: Objected to as not proper cross-examination.

The Court: I think you are going beyond the scope of the direct examination.

Mr. Greaves: All right.

The Court: If you want to of course you can make the witness your own. [147]

Mr. Greaves: I think I would be making him an adverse witness.

I have no further questions.

Mr. Campbell: Just one or two questions on re-direct.

(Testimony of Edward Goldstein.)

Redirect Examination

By Mr. Campbell:

Q. Mr. Goldstein, you were asked about various figures and you say you don't remember. At the time of this transaction, some six years ago, you knew the figures at that time? A. Yes.

Q. But you don't recall them at this time?

A. I haven't given them a thought since.

Q. And, Mr. Goldstein, something was said about how you paid for your interest. As I understood you it was money received by you as bonuses?

A. Yes.

Q. And was that part of your compensation that you should receive bonuses? A. Yes.

Q. And that money you converted into the purchase of stock? A. Of the stock.

Mr. Campbell: That's all. [148]

The Court: Any questions?

Recross-Examination

By Mr. Greaves:

Q. Did you not testify that the company had a stock bonus plan? A. No, I didn't.

Q. So you purchased all of your stock from the corporation? A. With my bonuses.

Q. Cash bonuses?

A. It was turned back in.

Q. I am sorry, I didn't hear that. I wonder if you could speak up just a little bit?

A. The bonuses that accumulated were turned into stock.

(Testimony of Edward Goldstein.)

Q. This is in addition to your salary?

A. Yes.

Q. Did the Boys Markets give its directors or officers bonuses every year? A. No.

Q. What were the bonuses based on?

A. Based on profits.

Q. Did this company make profits every year?

A. No.

Q. Did it make profits in 1953? [149]

A. I don't recall the year, no. I couldn't answer yes or no.

Q. But you can answer that it did not make profits in some years? A. Yes.

Q. From the time it became a corporation in 1946—

Mr. Campbell: I think we are getting beyond the scope of the redirect examination, if the Court please, and I am going to object upon that ground. The matters are immaterial.

The Court: I think that he has pretty well answered your question, anyway, Mr. Greaves. I wouldn't pursue it unless you want to bring something further out.

Mr. Greaves: No, I think that's all.

Mr. Campbell: That's all.

May this witness be excused? He is under subpoena.

Mr. Greaves: No, I think we had better keep him in case we have rebuttal.

The Court: Mr. Goldstein will have to go back in, then.

(Witness excused.)

Mr. Campbell: Mr. Max Goldstein, please. [150]
Whereupon

MAX GOLDSTEIN,

a witness called for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Would you state your name and address, please?

The Witness: Max Goldstein, 5107 Holt Avenue.

Mr. Campbell: Los Angeles?

The Witness: Yes.

Mr. Campbell: Will you keep your voice up, Mr. Goldstein, so everybody can hear you? The sound effects are very bad in here.

The Witness: Yes.

Direct Examination

By Mr. Campbell:

Q. What is your business or occupation?

A. Co-owner of Boys Markets.

Q. And what is your title?

A. Vice president.

Q. Are you also a member of the board of directors?

A. Yes.

Q. How long have you been vice president of the Boys Markets?

A. Oh, since—

Q. Since it started? [151]

A. Well, first it was a partnership and then it was incorporated.

Q. But you have been vice president ever since the corporation came into existence, is that correct?

A. Yes.

Q. It has been stipulated that you were during 1953 the owner of 1,271 shares of the 5500 shares outstanding of that corporation. Is that correct?

A. Yes.

(Testimony of Max Goldstein.)

Q. Now, do you recall in 1953, Mr. Goldstein,—
pardon me, strike that.

What were your duties with the—what are your
duties with the corporation as vice president? What
do you do?

A. Well, right now I am more or less supervisor of
the produce departments.

Q. Along with your brother? A. Yes.

Q. What were you doing in 1953?

A. Produce buying.

Q. Produce buying? A. Yes.

Q. That's a large part of the market business?

A. At that time it was. It took most of the day.

Q. That is a day-to-day operation, is it not? [152]

A. Yes.

Q. As compared to grocery buying, let us say?

A. Yes.

Q. Now during 1953 did you occupy an office at
the general offices of the company? A. Yes.

Q. Along with your other brothers?

A. Yes.

Q. And during that period of time was it the prac-
tice among you and with Mr. Eddy to discuss affairs
from day to day? A. Yes.

Q. And do you recall during the—

Mr. Greaves: I wonder if we could get a little more
definite answer to that. That is, will you state gener-
ally did you discuss the business affairs from day to
day, that doesn't mean anything.

Mr. Campbell: I am going to come to the specific
matter now.

The Court: Go ahead.

(Testimony of Max Goldstein.)

By Mr. Campbell:

Q. Do you recall early in 1953 any discussions had between you and your other brothers relative to the possible acquisition of the land upon which your San Gabriel market is located? [153]

A. Yes, we did.

Q. And do you recall a discussion as to how or in what manner such land could be acquired?

A. Yes.

Q. What was that discussion and whom did you have it with?

A. Well, we all talked about it.

Q. When you say "we all," to whom do you refer?

A. My brothers and Mr. Eddy and Mr. Joe Goldstein and Bernie and—

Q. In other words, the five brothers and Mr. Eddy, is that correct? A. Yes.

Q. What was said with regard to it, as to how and what the proposition was?

A. Well, we talked about acquiring the land, if we wanted to buy a piece of property in Las Vegas, and we just didn't want to buy any land in Las Vegas.

Q. When you say "we," to whom do you refer?

A. Well, Eddie and Joe, Bunny, Al.

Q. What was your own—what was your position in the matter?

A. Well, I just didn't want to buy any land in Las Vegas.

Q. Why? [154]

A. I just didn't want any part of Las Vegas.

Q. Well, what was the reason, Mr. Goldstein, with-

(Testimony of Max Goldstein.)

out detail? You had some unfortunate experience there?

A. Yes, we had, and I just didn't want to have anything to do with Las Vegas.

Q. When you say "we," do you refer to your brothers as well as yourself? A. Well, I didn't—

Q. What's that?

A. I didn't want anything to do with Las Vegas.

Q. And did you so express yourself to your other brothers? A. I did.

Q. I call your attention to the minutes of April 28th wherein it says, "At a previous meeting there was a discussion about the possibility of purchasing the land on which the San Gabriel market was located. It has now been decided that Joe Goldstein and Lillian Goldstein would buy this land as their private property." Did you participate in that discussion?

A. Yes, I did.

Q. And what was your position in the matter, what position did you take?

A. Well, I took the position that if they wanted to buy the land they could buy it and I just didn't want [155] to buy it myself or any part of it.

Q. I see. Was that your only objection to the deal, that it involved Las Vegas?

A. Las Vegas, yes.

Q. Now the records here show that subsequently some seven or eight months after that meeting and after the land had been acquired by Joe and Lillian Goldstein, the property was purchased by the corporation for \$75,000.00 from them. Do you recall that?

A. Yes.

(Testimony of Max Goldstein.)

Q. Did you participate in the decision to buy the property at that time? A. Yes, I did.

Q. And what were the reasons that you had at that time?

A. Well, for the Boys Markets buying the property?

Q. Yes.

A. Well, I thought it would be good for the Boys Markets to have the property.

Q. Was there any intention—strike that—was there any discussion then or at any other time in connection with that transaction of diverting a portion of the profits or the money of Boys Markets to Joe and Lillian Goldstein? A. No, there wasn't. [156]

Q. As far as you were concerned did you or did you not feel that that was a fair price to pay for the property?

A. Yes. We had had it appraised.

Q. When you say "We had it appraised," to whom do you refer?

A. Eddy and myself, Bunny.

Q. Did you make some appraisal yourself at that time? A. No.

Q. Whom did you have do that?

A. We had a man come in.

Mr. Greaves: I beg your pardon?

The Witness: A real estate man.

By Mr. Campbell:

Q. Do you recall who he was?

A. I don't remember his name now.

(Testimony of Max Goldstein.)

Q. But do you recall that you did discuss it with a real estate man at that time? A. Yes.

Q. And as a result of that discussion I take it that was had before the purchase of the property—

A. Yes.

Q. Now, prior to your appearance on the stand here were you at any time approached or questioned or sought to [157] be questioned by the Revenue Agents? A. No.

Q. Revenue Agent Goodman who made the investigation in this case? A. No.

Q. Or by any other Government agent?

A. No.

Q. You have, however, talked to me concerning the case? A. Yes.

Q. And that was within the last day or so, is that correct? A. Yes.

Mr. Campbell: You may cross-examine.

Cross-Examination

By Mr. Greaves:

Q. You are the vice president of the Boys Markets?

A. Yes.

Q. Are you first, second or third vice president or just vice president?

A. Just vice president.

Q. How did you acquire your stock in the corporation?

A. Well, that goes back a number of years. We had all worked together and we got bonuses and we bought stock in the company. [158]

(Testimony of Max Goldstein.)

Q. It goes back a number of years, you say?

A. Yes.

Q. To what?

A. I don't remember the exact time.

Mr. Campbell: Will you keep your voice up, Mr. Goldstein, so I can hear you?

The Witness: Yes.

By Mr. Greaves:

Q. Did you ever make a gift of stock to anyone in this corporation? A. Yes, I did.

Q. To whom? A. Mr. Eddy.

Q. How many shares?

Mr. Campbell: I didn't get the answer to whom?

The Witness: Mr. Eddy.

By Mr. Greaves:

Q. How many shares? A. Five.

Q. When?

A. Oh, it was either in—gee, I don't remember the exact date.

Q. Can you give us an approximate date?

A. It was around 1954 or '55.

Q. You remember all about this transaction of the [159] San Gabriel property, but you can't remember the subsequent year in which you gave stock to somebody?

Mr. Campbell: That's objected to as argumentative, if the Court please.

The Court: I will overrule the objection.

The Witness: What was the question?

Will you answer the question?

(The question was read.)

(Testimony of Max Goldstein.)

The Witness: Well, I don't remember the exact date.

By Mr. Greaves:

Q. I am just asking you for a year.

A. It was either in '53 or '54. I just don't remember.

Q. But you can't say which?

A. No, I can't.

Q. How does your job with the Boys Markets differ from that of Edward Goldstein?

A. Well, I done all the produce buying which started about 1:00 o'clock in the morning and took the better part of the day.

Q. What did Edward Goldstein do?

A. He was the supervisor.

Q. Your supervisor?

A. Yes, he was under me. [160]

Q. Yes.

Mr. Campbell: I think you are talking at cross purposes now, counsel. If you ask another question I think you can straighten it out.

By Mr. Greaves:

Q. You were Edward's boss?

A. Indirectly.

Q. He was under you? A. Yes.

Q. Indirectly or directly?

A. Indirectly. He answered to me.

Q. Indirectly, but he answered to you?

A. Yes.

Q. Did you attend every meeting of the board of directors of the Boys Markets?

(Testimony of Max Goldstein.)

A. Well, we had informal meetings.

Q. Did you attend every formal meeting?

A. I really don't know how many formal meetings we had.

Q. In these informal meetings you discussed were minutes kept?

A. Yes.

Q. Was the meeting that Mr. Campbell read—strike that. I will rephrase it.

In the meeting of April 28, 1953, the meeting of [161] the minutes Mr. Campbell read to you a few moments ago, was that a formal or informal meeting?

A. I just don't remember that far back.

Q. Well, you remember the transaction involved?

A. Well, I just don't remember whether it was an informal or a formal meeting.

Q. Is there any distinction between the two as far as the Boys Markets is concerned?

A. Yes. When we had a formal meeting we all gathered in the office and had a meeting. On our informal meeting maybe I would talk to one or two or three of us or four of us would talk and then we would call it a meeting.

Q. Do you recall a meeting that these minutes Mr. Campbell read to you from pertain to? A. Yes.

Q. Was it a formal or informal meeting?

A. It was a formal meeting.

Q. It was held in the office? A. Yes.

Q. Where were informal meetings held?

A. Where were they held?

Q. Yes.

(Testimony of Max Goldstein.)

A. In Joe Goldstein's office.

Q. All of them?

A. Yes. [162]

Q. Never in a warehouse or other places?

A. No.

Q. Did everyone attend these informal meetings, everyone on the board of directors?

A. The informal?

Q. Yes.

A. No, not the informal.

Q. Did Edward Eddy attend all those meetings?

A. Which meetings?

Q. The informal meetings?

A. The informal, no.

Q. Who kept the notes for minutes when he wasn't there?

A. Oh, sometimes Al Goldstein did, sometimes I did. We passed them on to Mr. Eddy.

Q. Now, calling your attention to the meeting of April 28th, 1953 were you in favor of the Golsteins' purchase of the San Gabriel property in their own name, you as director?

Mr. Campbell: You are referring to Joe and Lillian Goldstein?

Mr. Greaves: I am sorry, Joe and Lillian Goldstein.

The Witness: Was I in favor of it?

By Mr. Greaves: [163]

Q. Yes.

A. It just didn't make any difference to me who bought it.

(Testimony of Max Goldstein.)

Q. Do you know how much the property that they purchased in Las Vegas cost them?

A. No, I don't.

Q. Did it cost them \$35,000.00?

A. I don't know.

Q. Was the purchase of this property discussed in your presence by anyone?

A. Was it discussed? Yes.

Q. But not the price? A. No.

Q. As a director of the corporation did you know how much they were paying for it?

A. I wasn't interested in what they were paying for the property.

Q. Were you interested in what you as a director of the corporation authorize the corporation to pay for it at the time they did purchase it from the Goldsteins, Joe and Lillian? A. Yes.

Q. Why?

A. Because I was part of the corporation.

Q. In the April 28th meeting the board of directors [164] decided that Joe and Lillian Goldstein would buy this land for their private property and they may at sometime in the future sell it to the Boys Markets. Why weren't you interested in what they paid for it when you as a director were apparently willing to purchase this property from them?

A. Well, we had an appraisal from a reliable source.

Q. But you had no concern with what the purchasers, what Joe and Lillian were paying for this property?

Is that correct, did you or did you not have concern

(Testimony of Max Goldstein.)

for what Joe and Lillian were paying for this property as a director of the corporation?

A. Well, I had a concern, but when it was appraised that was the appraisal price.

Q. When was it appraised?

A. By the man that appraised it. I don't know what the date was.

Q. Was it the first part of 1953?

A. I really don't remember.

Q. Or the last part of 1953?

A. I just don't remember.

Q. But you are sure there was an appraisal?

A. Yes.

Q. Well, now, you testified on direct examination that you weren't interested in purchasing the San Gabriel property from the Torley Land Company because it would have [165] involved your having to get property in Las Vegas. Is that correct?

A. What was that?

Q. You stated on direct examination, I believe, that the reason you were not interested as a director of the corporation in purchasing the San Gabriel property was that you would have to buy the property in Las Vegas in exchange?

A. That's right.

Q. Is that the only reason?

A. That's the only reason.

Q. What was that based upon?

A. I just don't like Las Vegas.

Q. Why? Too much gambling? A. Well,—

(Testimony of Max Goldstein.)

Q. Sin, drinking?

A. That's right.

Q. All those things you don't like?

A. I like them.

Q. Any other reason?

A. I like them but that's my weakness.

Q. So you avoid Las Vegas?

A. As much as I can.

Q. Personally? A. Personally. [166]

Q. Have you been there in the last five years?

A. I have been there once in seven years, I think.

Q. Is there any reason why you would have to go to Las Vegas if the corporation purchased property there?

A. Well, I think I would have had to go down there, yes.

Q. If the corporation had purchased a lot and had built on that lot a fourplex apartment building you as the producer purchaser would have had to go to Las Vegas?

A. At that time I probably would have made it my business to go down there as a director.

Q. But you didn't make it your business as a director to find out how much Joe was paying for it?

Mr. Campbell: I object to it as argumentative now, if the Court please. He has given the answer, and this is in the form of argument.

The Court: I think I will overrule the objection.

Mr. Campbell: Answer the question.

The Court: It is simply a statement that he has made. You haven't asked a question yet, I don't think.

(Testimony of Max Goldstein.)

By Mr. Greaves:

Q. Why, if you would have concern for a property in Las Vegas didn't you also have concern for what Joe was paying for this property?

A. Well, I knew we would get a fair price for the [167] property. I mean it wasn't a question.

Q. Did you think they paid \$75,000.00?

Mr. Campbell: Wait a minute. He didn't finish his answer.

Mr. Greaves: I am sorry, I thought he did.

The Witness: The land was appraised by a real estate man.

By Mr. Greaves:

Q. Now, Mr. Goldstein, calling your attention to the stipulation of facts in this case—strike that.

Did you know, Mr. Goldstein, that your brother and sister-in-law paid \$35,000.00 for the property in Las Vegas that they exchanged? A. No, I don't.

Q. Do you know it now that I have stated it?

A. Yes.

Q. What did your corporation pay for this property?

Mr. Campbell: For which property now?

Mr. Greaves: The Las Vegas property, the only one they purchased.

Mr. Campbell: They never purchased in Las Vegas property.

The Court: The San Gabriel property.

Mr. Greaves: The San Gabriel property.

By Mr. Greaves:

Q. What did your corporation pay to Joe and Lillian [168] Goldstein for the San Gabriel property?

(Testimony of Max Goldstein.)

A. I don't follow you.

Q. Now,—

Mr. Campbell: Do you understand the question?

The Witness: No, I don't.

By Mr. Greaves:

Q. Did the corporation purchase the San Gabriel property? A. Yes.

Q. From whom?

A. From Mr. Torley.

Q. Your corporation purchased it from Mr. Torley?

A. No, no, we didn't, not the corporation, no. We had a building on there and we didn't—it wasn't our property.

Q. When did it become the corporation's property?

A. Well, after they transacted the business of the Las Vegas deal, I guess.

Q. Whom do you refer to as "they"?

A. Joe and Lillian and Mr. Torley.

Q. And it became the corporation's property at that time? A. No.

Q. When did it become the corporation's property?

The Court: He answered the question once, right [169] after the transaction between Joe and Lillian Goldstein and Torley.

By Mr. Greaves:

Q. Well, do you know just when? Can you be more specific?

A. No, I can't. I don't know the exact dates.

Q. Was it in 1953?

A. I don't know the date.

(Testimony of Max Goldstein.)

Q. Are you a member of the board of directors of the corporation? A. Yes.

Q. Are you an officer in this corporation?

A. Yes.

Q. Are you a shareholder in this corporation?

A. Yes.

Q. Are you interested in your corporation's business?

A. Yes.

Q. Did you vote as a member of the board of directors to purchase the San Gabriel property?

A. Yes.

Q. Do you know when you voted—do you know in what year you voted?

A. Well, I don't remember the exact year either now.

Q. Do you know how much you voted to pay for this? [170]

A. No, I don't remember.

Q. Did you know at the time how much you voted to pay for this property?

A. I just don't remember.

Q. But you were in favor of purchasing this property for your corporation?

A. Of purchasing the San Gabriel property?

Q. That is correct, sir.

A. No, I wasn't in favor of it.

Q. Were you in favor of purchasing this San Gabriel property from Joe and Lillian Goldstein?

A. Yes.

(Testimony of Max Goldstein.)

Q. Do you know when you purchased it from Joe and Lillian Goldstein as a director of your corporation?

A. I don't, the exact date I don't remember.

Q. Do you remember the year?

A. No, I don't.

Q. Do you remember the particular individual director's reason for thinking you should purchase this property from Joe and Lillian Goldstein?

A. Well, we thought it was a good investment.

Q. I am asking what you thought. What did you think?

A. Yes.

Q. You thought it was a good investment? [171]

A. Yes, for the Boys Markets.

Q. Based upon what? What was your opinion based upon?

A. The land value, and having the market there.

Q. Did you say you were in Mr. Campbell's office yesterday?

A. Yes.

Q. Did you discuss this case?

A. Well, a little bit of it.

Q. I beg your pardon? A. Yes.

Q. To your recollection at this time was any mention made of the amount paid by Joe and Lillian Goldstein for the Las Vegas property? A. No.

Q. To your recollection at this time was any mention made in Mr. Campbell's office with respect to the amount the corporation paid Joe and Lillian Goldstein for this property? A. No.

Q. Do you remember the meeting at all of yesterday? A. Yes.

(Testimony of Max Goldstein.)

Q. Do you remember who was there?

A. Yes, I do.

Q. Did you know or do you know at this time that [172] when your corporation purchased the property from Joe and Lillian Goldstein it was the lessee, that is the corporation was the lessee of that property?

A. I don't—I didn't get the question.

Q. Prior to the time your corporation bought the San Gabriel property, what was the nature of its being on there? How was it on that property? Did it have a lease? Did it own the property? What?

A. I still don't follow you.

The Court: It didn't own it prior to the time the corporation bought it from Joe and Lillian.

The Witness: About the Boys Market on it?

The Court: How did it operate the market?

The Witness: We had a ground lease.

The Court: That is what he is asking.

By Mr. Greaves:

Q. Now, do you know how long that ground lease had remaining?

A. No, I don't.

Q. Do you know how long the ground lease was for originally? A. No.

Q. Do you know how much rent the corporation paid? A. No.

Q. As a director you had no concern with that?
[173]

A. Well, I had concern, but the financial end was left to Mr. Eddy, and my end was just a produce buyer.

(Testimony of Max Goldstein.)

Q. Did Mr. Eddy run this corporation?

A. No.

Q. He apparently did according to you. He knows everything, you know nothing.

Mr. Campbell: Now, that is a statement of course, but it is a form of a question. I object to it, if the Court please. It is argumentative.

The Court: Your original question was all right, but your statement following it will be stricken. He asked you whether Mr. Eddy ran the corporation.

The Witness: No.

By Mr. Greaves:

Q. Who did?

A. We all ran it. But we had our specific duties.

Q. Did you know anything about the financial aspect of this business?

A. The financial?

Q. That's right. A. No.

Q. Money? A. No, I didn't know.

Q. Who did?

A. Joe Goldstein and Mr. Eddy. Mr. Eddy was the [174] controller.

Q. What office does Mr. Eddy have in the corporation? A. Controller and secretary.

Q. What motivated you to give Mr. Eddy stock in this corporation?

A. Well, he had just helped me along, done a lot of favors for me.

Q. Favors?

Mr. Campbell: Faith, I think he said.

The Reporter: "Favors."

(Testimony of Max Goldstein.)

By Mr. Greaves:

Q. Mr. Goldstein, would it be fair of me to state at this time that you knew nothing about the details of the transaction for the San Gabriel property?

A. No, I didn't.

Q. You would say that was a fair statement?

A. Yes.

Q. I didn't hear that. A. Yes.

Q. Would you also say it was a fair statement if I were to say that Joe Goldstein and Edward Eddy knew about this transaction with the San Gabriel property?

Mr. Campbell: I will stipulate to that. I will stipulate if you want that they both knew about it. [175] Mr. Eddy has testified to it and Mr. Goldstein is the taxpayer.

Mr. Greaves: Are you objecting to my question?

Mr. Campbell: I was going to save you time.

The Court: I haven't heard any objection.

Mr. Campbell: I object to it. It calls for his conclusion as to what was in their minds and knowledge.

The Court: I think you had better establish whether he knows or not.

By Mr. Greaves:

Q. Do you know whether Mr. Joe Goldstein knew about this transaction, these transactions involving the San Gabriel property?

A. Whether I knew that he knew it, knew of it? Yes.

Q. To your knowledge did Mr. Eddy know about the transactions involving the San Gabriel property?

A. Yes.

(Testimony of Max Goldstein.)

Q. To your knowledge did any other member of the corporation know about this transaction?

A. No.

Mr. Greaves: I think that's all.

Redirect Examination

By Mr. Campbell:

Q. Let me clarify one or two things, Mr. Goldstein. [176] In the first place as to the position occupied by you and Edward back in 1953 I understand from your testimony that you did the buying of the produce, is that correct? A. Yes.

Q. And that Edward supervised, was the supervisor, is that correct? A. Yes.

Q. By that is it meant that he supervised the sale of the produce in the markets, in the stores?

A. Yes.

Q. You did the buying and he supervised the selling, is that correct? A. Yes.

Q. The buying as I understood from your testimony required that you be at the wholesale markets as early as 1:00 o'clock in the morning? A. Yes.

Q. And to remain there throughout the day, is that right?

A. Till, oh, 12:00 1:00 o'clock in the afternoon.

Q. 12:00 or 1:00 o'clock in the afternoon is when the produce market generally closes, is that correct?

A. Yes.

Q. All right. Now, you stated in response to counsel's questions that it was fair to say that Joe [177] Goldstein and Mr. Eddy knew all about these transactions, but I understood from your testimony and it is

(Testimony of Max Goldstein.)

the fact that you did discuss these various matters with Joe and with Mr. Eddy?

A. We discussed them, yes.

Q. I further understood from your testimony that the manner in which the business was conducted was that each one had his portion of the business, is that correct? A. Right. Right, yes.

Q. You yourself happened to be the produce buyer? A. Yes.

Q. I gathered from your testimony that Mr. Eddy had charge of the finances, is that correct?

A. Yes.

Q. And Mr. Joe Goldstein had general supervision over everything, is that right?

A. Yes, right.

Q. Now, is it or is it not true that you knew of the proposition to buy this San Gabriel property long before Joe and Lillian actually bought?

Mr. Greaves: Objection.

The Court: I will sustain the objection. Rephrase it.

Mr. Campbell: All right.

By Mr. Campbell: [178]

Q. How long before the purchase of the San Gabriel property or the acquisition of the San Gabriel property by Joe and Lillian Goldstein did you know about the transaction? Do you have any idea in months, days or weeks?

A. We had talked about it, and I don't know exactly how long before.

Q. Now, you have mentioned the fact that you dis-

(Testimony of Max Goldstein.)

cussed with your brothers the fact that you wanted nothing to do with anything involving Las Vegas. Was that a single discussion or did that take place over a period of time?

A. Over a period of time.

Q. Did your other brothers express themselves on that subject, too?

A. Yes.

Q. And how and in what manner, what did they say about it?

A. They didn't want any part of it, either.

Q. I gather, though, Joe didn't have that feeling, is that right?

A. Well, I really don't know what feeling he had.

Q. I see. But so far as you were concerned you wanted nothing to do with it, I take it?

A. No. [179]

Q. Do you recall the time when the corporation bought the ground at San Gabriel?

A. I don't remember.

Q. Yes or no, I don't mean the date.

A. No, I don't.

Q. Do you recall the official occasion?

A. Oh, yes.

Q. You do recall the occasion?

A. Yes.

Q. And do you recall how much was paid for it?

A. No, I don't.

Q. Did you know at that time?

A. No.

Q. You mean at the time you bought it you didn't know how much you were paying for it?

A. Oh, yes, but I don't recall now what it was.

(Testimony of Max Goldstein.)

Q. And I gathered from your testimony that at that time you had had some sort of information as to an appraisal, is that correct?

A. Yes, we did.

Q. Those things were in your mind back whenever it was that the property was purchased, is that right?

A. Yes.

Q. As I gather you do not recall them now?

A. No, I don't. [180]

Q. And were those matters that were discussed among the four or five of your brothers?

A. Was it discussed?

Q. Yes. A. Yes.

Q. And was it discussed with Mr. Eddy?

A. Yes.

Mr. Campbell: That's all.

The Court: Any further questions, Mr. Greaves?

Mr. Greaves: Yes, I have.

Recross-Examination

By Mr. Greaves:

Q. You knew at the time of approving your corporation's purchase of the San Gabriel property?

A. At the time, yes.

Q. How much you paid for it? A. Yes.

Q. Do you recall?

A. I don't recall how much.

Q. You paid \$75,000.00 for that property. Do you recall now that amount of money?

A. No, I don't.

Q. Did Mr. Eddy tell you how much the corporation was going to pay for this property?

(Testimony of Max Goldstein.)

A. I am sure he did, but I just don't remember the [181] amount.

Q. Well, how do you remember then that you knew what the amount was?

A. Because we had discussed it.

Q. I can't hear. You will have to speak up.

A. We discussed it.

Q. What did you discuss?

A. The amount of money we paid for it.

Q. Who is "we"?

A. Mr. Eddy, I, Bunny, Eddie, Bernard.

Q. Do you remember having discussed it?

A. Discussed it, yes.

Q. But you don't remember even after I tell you the amount involved was \$75,000.00?

A. No, I don't.

Mr. Greaves: That's all, your Honor.

Further Redirect Examination

By Mr. Campbell:

Q. Mr. Goldstein, I am reluctant to ask you this but I understand that since these events you have had a very severe illness, is that correct?

A. Yes.

Q. As I understand it you have had two minor strokes, is that correct? A. Yes. [182]

Q. And has that affected your memory?

A. Well, quite a bit.

Q. I see. All right, thank you, sir.

When were those suffered, Mr. Goldstein? When did you have this illness?

(Testimony of Max Goldstein.)

A. Last—the first one about six or seven years ago, and one about two years ago.

Q. About two years ago? Thank you very much.

The Court: Any further questions, Mr. Greaves?

Mr. Greaves: No.

The Court: All right, may this witness be excused, or do you want him?

Mr. Greaves: I think he may be excused, your Honor.

Mr. Campbell: You may go about your business.

Mr. Greaves: If I had known that he had had strokes I wouldn't have subpoenaed him.

The Court: We will recess for five or six minutes.

(Witness excused.)

(Short recess taken.)

Mr. Campbell: Mr. Goldstein. [183]

Whereupon

JOE GOLDSTEIN

called as a witness by and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Would you state your name and your address, please?

The Witness: Joe Goldstein, 85 Fremont Place, Los Angeles, California.

The Clerk: Thank you.

Direct Examination

By Mr. Campbell:

Q. Mr. Goldstein, you are the Joe Goldstein who together with your wife Lillian are the petitioners in this case? A. Yes, sir.

(Testimony of Joe Goldstein.)

Q. And what is your business or occupation, Mr. Goldstein?

A. President of the Boys Markets.

Q. That is the corporation? A. Yes.

Q. Now, Mr. Goldstein, it has previously been stipulated here that during the year 1953 you were the owner of 2,720 and your wife as joint tenants the owner of 150, and your wife as trustee for your minor children the [184] owner of 5,500 outstanding shares of stock of the Boys Markets, a corporation, is that correct? A. Correct.

Q. And during the year 1953 and at all times prior thereto from the date of the activation of the corporation you had been president and a director of that corporation? A. Yes, sir.

Q. And your wife has been a director of the corporation also? A. Yes, sir.

Q. Now, Mr. Goldstein, there has been I believe stipulated here that the corporation was the successor to a limited partnership of which you were the general partner, is that correct? A. Correct.

Q. And that the corporation commenced its business on or about January 1st, 1936 at which time the assets of the co-partnership were assigned to the corporation, is that correct? A. Correct.

Q. Now, going back to that time and shortly prior thereto and during the year 1945 had the co-partnership entered into a certain lease of real property which lease has been admitted here in evidence as 2-B whereby the [185] co-partnership leased certain land in the City of San Gabriel for a period of 50 years from

(Testimony of Joe Goldstein.)

the Torley Land Company? You are familiar with that lease? A. Yes, sir.

Q. And by whom was that lease negotiated?

A. By myself with some assistance from Mr. Eddy.

Q. Yes. Incidentally, you at all times have been the chief officer and executive office of both the co-partnership and the corporation, is that correct?

A. Yes, sir.

Q. Now, at the time that the corporation was formed, I believe that lease was—I mean at the time the corporation was activated I believe that lease was assigned to the corporation, is that correct?

A. Yes.

Q. A notification of such assignment was given to Torley Land Company?

A. Yes, sir.

Q. Now, you are familiar with the terms of the lease, are you not?

A. Yes, pretty much so.

Q. And to refresh your recollection are you familiar with the provisions therein that in event of an assignment of the lease that the partnership lessee named herein should continue to be liable under the terms thereof? [186]

A. Yes, yes, sir.

Q. Now, —

Mr. Greaves: Are you referring to any particular provision in here?

Mr. Campbell: Well, I can dig it out. Provision 15, reading as follows: "The lessee may assign three-fold interest any time after date hereof in a manner

(Testimony of Joe Goldstein.)

herein set forth and not otherwise.” And there are two sets of provisions. “If the lessee shall assign a threefold interest herein at any time before it shall have fully completed and paid for the initial building herein provided for of a value and in the manner herein provided for then until said building shall have been fully completed and paid for as hereinbefore set forth the lessee shall remain liable for the faithful performance of all the covenants and agreements of this lease as though no assignment had been made. In the event the lessee shall assign this lease after the completion of the aforesaid building—”

The Court: I do not think it is necessary to read all of that. It is Paragraph 15. You are familiar with it?

The Witness: I am very familiar with it, very much.

By Mr. Campbell: [187]

Q. And I refer also particularly to that portion of Paragraph 15 appearing on Page 23. I refer to the entire Paragraph 15. Now shortly after or immediately after the notification to the Torley Land Company of the assignment I will ask you if you received a letter with regard to the liability of the limited partnership under the terms of the lease, and despite the assignment. Did you receive such a letter?

A. Oh, yes.

Q. I will show you a letter dated March 28, 1946 upon the letterhead of J. Vincent Hannan, and ask you if you received that document.

A. Yes, sir.

(Testimony of Joe Goldstein.)

Q. Do you recall having received it at or about the date that it bears? A. Yes.

Mr. Campbell: This letter will be offered in evidence as Petitioners' exhibit next in order.

The Clerk: Petitioners' Exhibit No. 7 marked for identification.

Mr. Campbell: It will be offered in evidence.

The Court: Any objection?

Mr. Greaves: No objection.

The Court: Petitioners' Exhibit No. 7 will be received in evidence. [188]

(Petitioners' Exhibit No. 7 was marked for identification and received in evidence.)

By Mr. Campbell:

Q. Any time during the existence of this lease up until the time the lease was assigned to you and Mrs. Goldstein by the Torley Land Company did the Torley Land Company ever release you as a general partner or individually or the partnership of the Boys Markets from the liability under that lease?

A. No, sir.

Q. Now, with respect to the lease and with respect to that notification which you received from the Attorney for the Torley Land Company did you have any belief as to your liability under the terms of the lease?

A. Was I aware of my liability under the terms of the lease?

Q. Yes.

A. Very much so.

Q. And as to the sole general partner of a partner-

(Testimony of Joe Goldstein.)

ship no longer in existence were you aware of such liabilities? A. Yes, sir.

Q. Now, Mr. Goldstein, let me ask you this: Will you describe the method of operation of the Boys Markets, the corporation, as it existed from the time it commenced [189] doing business, January 1st, 1946 to the end of 1953; that is to say, the division of duties among the officers and stockholders?

A. I don't quite understand that question.

Q. What duties were performed by the various officers?

A. Oh, by the various officers?

Q. It is a fact, is it not, as shown by the stipulation here, that the stock was owned by you and your brothers? A. Right.

Q. All right. And that you and your brothers together with Mr. Eddy were the officers of the corporation, is that correct?

A. That's correct.

Q. Now, how were the duties divided? What duties developed upon each of you?

A. Well, Mr. Eddy had quite a bit to do with the financial end of the business, and, oh, matters of leases that were to be executed and so forth. When I got things to a certain point I would turn them over to Mr. Eddy to take care of the details and to follow through with the execution of the proposed lease or whatever the business happened to be.

And Max Goldstein, his duties were mainly in [190] produce buying, and we always felt in the trade that he was an expert at it. You have got to be pretty

(Testimony of Joe Goldstein.)

good to make any money in the produce business in Los Angeles.

Bernard Goldstein was in charge of the meat buying. Naturally some of his duties overlapped in supervision and so forth, but that also is a full time job.

Q. Did he also supervise the markets?

A. Yes, more or—yes, also he supervised it, too.

Q. All right, go ahead.

A. Then we get to Eddie Goldstein. Well, Eddie was supervising the produce departments and he was very good with personnel. He did quite a bit of the hiring, firing. And then of course he overlapped into other duties such as seeing the markets were kept as clean as they could be and different things like that. Where else have I missed?

Q. Al.

A. Oh, Al, yes. Well, Al, he was in charge of the—quite a few brothers—he was in charge of the grocery buying and his duties would overlap. He happened to have a little bit more of an education than the rest of us and could express himself a little better than Max, Eddie or I, and we called upon him to help in other things such as addressing the managers meetings and so forth.

Mr. Greaves: I can't hear these answers at all. Speak up a little bit more, if you will, please, sir. [191]
By Mr. Campbell:

Q. And what were your duties?

A. Well, my duties were mainly in finding locations. It is quite a job checking up on four brothers to see that they perform their duties. I did buying,

(Testimony of Joe Goldstein.)

everything else. I looked at the sales reports, profit and loss statements, and I could fill in on most every department in the organization, any type of buying or supervising or anything because I have done it all.

Q. Who did the hiring of the store managers?

A. What?

Q. Who did the hiring of the store managers?

A. I have done it, Al has done it. In recent years up until the time Al left, he did most of it.

Q. I see. Was there anyone assigned to the overall personnel hiring and firing?

A. I have said that Al had most of that responsibility.

Q. During that period of time? A. Yes.

Q. When did he leave the organization?

A. He left almost two years, I believe, a year and a half, two years.

Q. I see. He was never a stockholder in the corporation? A. No. [192]

Q. Now, incidentally, there has been some testimony here that your experience in the grocery business goes back to 1926?

A. I opened the first market when I was just 17 years old, in 1925. I was broke and in the board of trade when I was 18, settled for ten cents on a dollar and paid off everyone.

Q. Subsequently—

A. Subsequently, yes.

Q. And these other brothers are your younger brothers, is that right? A. Yes.

Q. Now, how did they acquire their interest in the

(Testimony of Joe Goldstein.)

business, those who now have stock in the corporation?

A. Excuse me, but by a hell of a lot of hard work. They were paid for it and acquired the stock.

Q. Will you explain that briefly when they began their association?

A. Well, Eddie Goldstein, I can remember him lifting a hundred pound sack of potatoes off a wagon with me when he weighed ten pounds less than the sack of potatoes. I remember him going to Garfield High School and he'd get out let's say at 3:00 o'clock and the high school was a good ten miles from the store, and he didn't walk, he ran all the way down. This went on for years. [193]

Q. Well, let's get down to this. A. Oh—

Q. I take it—

A. I get carried away.

Q. Pardon me. Was any of the stock given to them or did they work for the money?

A. They worked for it.

Q. They worked for it?

A. Absolutely.

Q. And something was said here about their receiving bonuses which they applied on the stock?

A. It's always been the policy of paying bonuses in the Boys Markets when the profits warranted making the payment of bonuses, and they have been paid to others than the officers, also.

Q. Bonuses were not confined to them, is that correct? A. No.

Q. Was it their choice or was it required of them

(Testimony of Joe Goldstein.)

that they put these bonuses back into the acquisition of stock?

A. That was their choice.

Q. Now at the time in 1936 when you activated the corporation and those brothers who afterwards had stock or already acquired interests, did they have an interest before [194] the corporation?

A. In the partnership?

Q. In the partnership.

A. In the partnership, let's see now. There was—yes.

Q. So that that was carried over into the corporation? A. Yes.

Q. The stock was issued, is that correct?

A. Yes, sure.

Q. All right. Now, coming again to this situation of the lease with Torley and to the—directing your attention to the transaction wherein you and Lillian Goldstein acquired the real property, do you recall when the negotiations which culminated in this particular transaction started?

A. For this particular transaction?

Q. Yes.

A. This particular phase of it?

Q. Yes.

A. Well, it's hard for me to remember exactly when, but I would say in '52 or '53, probably the end of '52, the beginning of '53.

Q. I see. The end of '52 or when—

A. Or early '53. It is hard to remember those dates. [195]

(Testimony of Joe Goldstein.)

Q. And do you recall who started the negotiations, who initiated them as far as you know?

A. I initiated them.

Q. With whom?

A. With Mr. Torley.

Q. Where?

A. It started at the bar at the Santa Anita Race Track.

Q. I see. And the race season there commences about Christmastime?

A. Yes, that's right.

Q. So it would be late in '52 or early '53?

A. Yes.

Q. All right. Now, with whom did the proposition of a trade originate, Mr. Goldstein?

A. Well, that's hard to say just whether it originated with me or Mr. Torley. I know that I had been trying to buy the property, trying and trying, and just couldn't.

Q. I see. How did this trade proposition come about then? Will you relate your meeting with Mr. Torley and what brought it about?

A. Well, one of the main reasons why you couldn't deal with the fellow was his objections to paying a high tax on the property, and so you know I guess he owned it [196] for sometime, so—

Q. I take it you gathered he had a very low base on the property?

A. Low base. And I wouldn't be surprised but what I—

(Testimony of Joe Goldstein.)

Q. No, let's not say what you would be surprised at, but what the negotiations were.

Did you discuss with him the possibility of buying the property for cash?

A. Oh, yes, yes.

Q. And what was his reaction to that?

A. No.

Q. He was not willing to sell it?

A. Not interested in selling it for cash.

Q. All right. Then what was the next proposition, and how did it come about?

A. Well, to the best of my—probably I might have suggested that maybe we could get together on a trade.

Q. All right. Then what happened?

A. Then he sort of thought that might be interesting and that he would talk it over with his son and his attorney.

Q. Yes.

A. So I told him to think it over and get in touch with me if he was interested. [197]

Q. Did he subsequently get in touch with you?

A. Yes.

Q. Now, at that time had any specific trade or had any specific property been discussed?

A. No.

Q. Or had any specific figure monetarily-wise or value-wise been discussed?

A. No.

Q. All right. It was simply the general proposition if he didn't want to sell for cash he was going to think over making a trade, is that right?

(Testimony of Joe Goldstein.)

A. That's right, yes, sir.

Q. And now how soon after that did you again hear from him, or did you approach him?

A. Well, again I can't remember whether I ran into him again and brought it up—I would have gone out of my way to do so—or whether his son called me. I don't remember.

Q. I see. But was a proposition made at that time?

A. Yes, right along, soon after that proposition was made.

Mr. Greaves: Can we pin this down?

Mr. Campbell: I am just going to try to.

By Mr. Campbell:

Q. Now, I am going to call your attention to the [198] fact that according to the minutes which have been read here it indicated that on January 27, 1953, "The president stated it might be possible to purchase the land now under lease in San Gabriel," and in the April 28th minutes it is stated that it has been decided that you and Lillian might buy the land as your private property. Now, does that assist you, those dates, in fixing approximately the time as best you can of the making of any proposition by Torley?

A. Well, I would say that in the latter part of January, late February, or early February—

Q. It would be after that first note?

A. Yes.

Q. After January 23rd?

A. Yes. And to the best of my recollection the first conversation about what kind of a deal could be made came from Ray Torley, his son.

(Testimony of Joe Goldstein.)

Q. Torley Land Company was a corporation?

A. Yes.

Q. All right. Go ahead. Where did that conversation take place, if you recall?

A. It might have been—I think it was at a small market up in—that Mr. Ray Torley operated in the town of Ontario, California.

Q. All right. Who was present at that time if you [199] recall?

A. Ray Torley and myself.

Q. And what proposition, what was said at that time?

A. Well, to the best of my recollection Ray said that J. B., that being his dad, he was J. B., was spending, was sort of retired, and was spending all of his time in Las Vegas, and he was interested in a trade if he could, and if the—if any property that he traded would be in the City of Las Vegas, Nevada. He was insisting upon that.

Q. When you say “insisting upon it,” what did he say about it?

A. Well, he said, “Joe, that is the only way the old man is going to spend the rest of his days in Las Vegas and he is not interested in acquiring any more property any place else but Las Vegas, and if you can—”

Mr. Greaves: I move to strike that answer as being hearsay.

The Court: I will overrule the objection. He is leading up to this transaction.

(Testimony of Joe Goldstein.)

By Mr. Campbell:

Q. Now, was any—what was the next event that took place in regard to this transaction?

A. Well, the Las Vegas thing didn't interest me too much. I didn't particularly like it, but I remember [200] coming back and discussing it with the boys and the rest of the directors and—

Q. When you say the "boys," that's all of you. All of you are generally known—

A. Well, that's right, yes.

Q. The trade you are referring to, also, was referred to as the boys? A. Yes.

Q. And you refer to each other as the boys?

A. Yes.

Q. All right, go ahead.

A. And I know that I informed them that there was only one way that property could ever be acquired from Torley Land Company, and that was some kind of a deal that would originate and end up in Las Vegas, period.

Q. That statement was based on the information given to you by Ray Torley, is that correct?

A. Yes.

Q. Ray Torley. Do you know whether or not he was an officer of the Torley Land Company?

A. I am pretty sure he was.

Q. Yes. That fact afterward—I think the deed is here in evidence—did you have any discussions at that time with Ray Torley's father?

A. You know I think—I am not sure, but I think [201] I finally had to make a trip up there to see him.

(Testimony of Joe Goldstein.)

Q. As it developed—strike that.

Did you discuss with either of the Torleys the possibility of a trade for some of the property located at any other location?

A. Yes, on numbers of occasions long before '53 even.

Q. You had discussed that phase of it?

A. To some extent I had discussed everything with them. I had been trying to acquire the property one way or another.

Q. I gather from your statement then that you were advised that it had to be a property in Las Vegas, is that correct?

A. Definitely.

Q. And discussed that fact with your brothers?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And what was their reaction as directors to that?

A. Well, they didn't like the idea of getting involved in anything.

Q. Now, will you explain incidentally, Mr. Goldstein, the family antipathy to Las Vegas? I know it is unpleasant, but will you explain that so we can understand it is just [202] not an eccentricity?

A. Well, us five boys are very close, and on occasions the five of us have gone up there without our wives, just wish we hadn't have gone. It was a long trip home. We lost a little more money than it was wise to lose, not any more than we could stand, but it was a long trip home. We just had too much of a ball.

(Testimony of Joe Goldstein.)

We know a lot of people in Las Vegas, and as it happens a couple of my brothers would rather shoot dice than east, if given the opportunity, and opportunities in Vegas are there, and they enjoy a good reputation, and they have a bad habit in Las Vegas of extending credit, and they thought it would be a good idea for us just not to have anything to do with it, period, including yours truly Joe Goldstein.

Q. And had that been an agreement among the members of the family?

A. I don't quite understand.

Q. Had you all agreed among yourselves that you would have nothing to do with Las Vegas?

A. To the best of our ability.

Q. I see. All right. Now, as I understand it from what you say your brothers when you explained that this deal had to be in Las Vegas wanted no part of it, is that correct?

A. That is right.

Q. At that time had you had discussions with anyone [203] on the Torley side to determine what would be involved in acquiring the Las Vegas property?

A. What would be involved?

Q. Yes, sir.

A. Well, knowing Mr. Torley as well as I do I didn't know what would happen, and a lot of things could be—

Q. No, I mean how much money would be involved originally? A. Well,—

Q. That is to say, had you discussed whether or not the apartment house and the land was to cost \$5.00 or \$500,000.00?

(Testimony of Joe Goldstein.)

A. Now listen, I had to have this pretty bad, and this little old horse trader was hard to talk figures, he just didn't discuss too much. All I knew was that we wanted—I wanted that property—and I was afraid to throw any figures around arousing his suspicions. And on past deals he has reneged at least twice on deals that were made. I had to be very cautious.

Q. All right. Then at the time you discussed the matter with your brothers I take it you did not know, no price had been arrived at for the acquisition of the apartment, is that correct?

A. No. I had ideas in my mind, but I didn't know what was going to happen. [204]

Q. So I take it you did not discuss \$35,000.00 or any other figure with your brothers?

A. I can't remember discussing that because we might have thrown a figure around. We had a lot of ammunition. The fellow was only getting \$800.00 a year, and even after I made the deal with him I felt sorry for him and tried to talk him out of it. So we know with a return of \$800.00 what the heck you have got to have invested. So I was going to buy within that range of income. Now, I didn't know what would happen.

Mr. Greaves: I have gotten lost, your Honor, between the question and the answer. I think the question was directed to a discussion with the brothers, and the answer was involved with a discussion with Mr. Torley. Is that correct?

Mr. Campbell: No, I am sitting here enjoying the answer myself.

(Testimony of Joe Goldstein.)

The Court: Well, he started out answering the question "No, there wasn't any particular figure," and then it was just more or less an explanation.

Mr. Campbell: Why there wasn't.

The Court: What the situation was.

The Witness: Couldn't have a figure, it was impossible.

Mr. Campbell: Your Honor was about to say something. [205]

The Court: No, I have finished.

By Mr. Campbell:

Q. Now, when was it in connection with the deal that you made with Torley that a figure was first arrived at?

A. Well, that would have been after I talked to him in Las Vegas because I—

Q. Would that be before or after you had discussed the matter with your brothers when Las Vegas came into it and they wanted nothing to do with it?

A. That would have been—let's see—would that have been afterward? When the price was arrived at it probably was after I had talked to my brothers, probably.

Q. That you finally arrived at a price?

A. Yes.

Q. Did you ever advise your brothers of the price? Did you ever tell them about it?

A. Oh, I suppose so.

Q. Did you make it any particular secret?

A. No, I didn't make no secret, nor did I—I don't think I made much of an effort to tell them what it was.

(Testimony of Joe Goldstein.)

Q. I see. All right. Now you say you went up to Las Vegas and met with Mr. Torley?

A. Yes. [206]

Q. After meeting with Mr. Torley I gather you entered into the escrows by which this deal was accomplished, is that correct?

A. Well, I met with him, and then I engaged a real estate agent up there and gave him an idea of the problem here, and then—

Q. What was your arrangement with Mr. Torley at that time with the Torley Corporation?

A. Well, if they could find a suitable piece of property that they would—that he would be willing to trade for his fee for, he would make a deal. And it was my business to see that he didn't find one that was too high-priced where we'd have a problem.

Q. And was the type of property specified?

A. Apartment house, residential income type of thing.

Q. Was it to be with any specification made in these preliminary negotiations as to whether it was to be a new apartment house or one that was already built?

A. As it ended up—

Q. No, I know how it ended up.

A. Oh, at one time there was—yes, I remember now at one time he was interested in a—oh, yes, he was interested in an older house, and this is what I wanted him to get interested in because I didn't—I didn't like the [207] idea of getting involved in building one because I was dealing with a pretty nice sharp dealer.

(Testimony of Joe Goldstein.)

He's all right. I have a lot of respect for his ability to deal.

Q. Who was it who finally picked out the lot that was used?

A. Oh, he must have. He did.

Q. Your man didn't find the lot?

A. I can't make sure. I just don't remember.

Q. I see. But at least a lot was ultimately decided upon, is that correct?

A. Mr. Torley must have found it himself.

Q. And who was it that fixed the price that was to be spent for an apartment house to be built on that property?

A. He and I did.

Q. By discussion?

A. Yes.

Q. Was that before or after an architect or builder had been interviewed?

A. Before.

Q. And what was the price that you agreed upon?

A. It was in the thirty thousands, thirty-four thousand, thirty-five thousand, something like that.

Q. For the over-all, is that correct?

A. Yes, that was to be the total cost. [208]

Q. Who picked the contractor who was to build upon the property?

A. Mr. Torley.

Q. Now, as a result of those negotiations did you enter escrow agreements? I believe those have been marked, have they not, for identification, three escrow agreements clipped together.

The Court: Were they an exhibit attached to the stipulation?

Mr. Campbell: No, no, your Honor.

(Testimony of Joe Goldstein.)

The Court: I do not believe they have been presented yet.

Mr. Campbell: I gave them to the Clerk to mark this morning. Well, I will use the photostats.

By Mr. Campbell:

Q. I show you three documents each of which are labeled escrow instructions, being escrow instructions with the First National Bank of Ontario, California, being escrow Nos. E13965, 66, and 67, and ask you if you recognize these as the three escrows opened at that institution between yourself and Lillian Goldstein on the one hand and the Torley Land Company on the other?

A. Yes.

Q. And are those the three escrows that were involved in that transaction? [209]

A. Yes, sir.

Mr. Campbell: I will offer these under one number, if the Court please.

The Clerk: Petitioners' Exhibit No. 8 marked for identification.

Mr. Campbell: I will offer them in evidence.

The Court: Any objection?

Mr. Greaves: No objection, but I would suggest that it might be easier to identify these exhibits if they were either marked separately or supplemented somehow. The fact that they all have separate differential numbers appearing in the right-hand corner—

Mr. Campbell: I have no objection to that except they all relate actually to the same transaction, but it is customary in a trade transaction to have one escrow by which the real property in Las Vegas was pur-

(Testimony of Joe Goldstein.)

chased, one under which the apartment house was constructed, and then the trade was consummated in the third escrow.

The Court: Now does each one of those have a different number on them?

Mr. Campbell: Each one has a different number.

The Court: I think that is sufficient identification. They can be referred to by that number.

All right, Petitioners' Exhibit No. 8 will be received in evidence. [210]

(Petitioners' Exhibit No. 8 was marked for identification and received in evidence.)

By Mr. Campbell:

Q. Now, in connection with the acquisition of the Las Vegas property and the erection of the apartment house as set forth in those instructions, how much did you expend, Mr. Goldstein? What did it cost you?

A. \$35,000.00 approximately.

Q. And was that your own and your wife's money that was used in that regard? A. Yes, sir.

Q. It was not money belonging to the corporation? A. No, sir.

Q. Nor borrowed from the corporation?

A. No, sir.

Q. And entering into that transaction did you intend to accept for yourself any risks which might be involved therein? A. Did I intend—

Q. Were you taking any risks that were involved?

A. Oh, yes, sure.

Q. What I mean to say is that you had no assurance from your corporation or from anyone else that if

(Testimony of Joe Goldstein.)

there was a loss resulting that they would make it good, did you? A. That's right. [211]

Q. You had no such assurance?

A. I had no assurance of that.

Q. Now, prior to entering into this transaction, are you able to state definitely that your brothers in the corporation and Mr. Eddy having been informed of the proposed trade declined it on behalf of the corporation?

A. Yes, they had declined it on behalf of the corporation.

Q. Now, subsequently—

Mr. Greaves: May I request the Court ask counsel to be a little less leading in his questions?

Mr. Campbell: Very well. I am sorry. The hour is getting late and I am getting run down.

The Court: Try not to put words in the witness' mouth.

Mr. Campbell: I will try not to.

By Mr. Campbell:

Q. Now, in connection with that transaction and at the close of the escrow, what did you and Mrs. Goldstein receive, what did you get?

A. Well, we got title to the property after the close of the escrow.

Q. You got a deed to the property?

A. We got a deed to the property.

Q. And together with that did you receive a policy [212] of title insurance which has been placed here in evidence? A. Oh, yes.

Q. Which recites that the title is subject to the lease to the Boys Markets, is that correct?

(Testimony of Joe Goldstein.)

A. Yes, that's right.

Q. Now, in connection with those escrows did you receive an assignment of that lease from the Torley Land Company to you and Mrs. Goldstein?

A. Yes.

Q. Mr. Goldstein, what then having received title to the property and according to the policy of title insurance, the policy vested in you on December 28, 1953, what did you then do with the property, with the title of the property? A. We didn't do anything.

Q. Did you subsequently sell it?

A. Oh, we eventually sold it, yes.

Q. When? A. In late December.

Q. And to whom? A. To the Boys Markets.

Q. And for what price? A. \$75,000.00.

Q. Now in that connection and prior to the purchase by the Boys Markets was discussion had among the stockholders, [213] other stockholders and yourself? A. Yes.

Q. Your other directors? A. Yes, sir.

Q. And at that time did you consider \$75,000.00 to be a fair price for that property? A. Yes, sir.

Q. To your knowledge was some independent investigation undertaken by Mr. Eddy for the purpose of ascertaining the fair value of that property?

A. Yes, sir.

Q. And if you know of what did the investigation consist?

A. It consisted of contacting the Bank of America and finding out what would be a fair price for the Boys Markets to pay for the property for me to sell it.

(Testimony of Joe Goldstein.)

Q. And subsequent to that transaction, Mr. Goldstein, do you recall the fact that the Revenue Agent made some investigation relative to various affairs of the corporation referring to a Mr. Goodman?

A. What?

Q. Do you remember the fact that Mr. Goodman—of Mr. Goodman's investigation in that case?

A. Yes, I remember.

Q. Did Mr. Goodman or did anyone else during the [214] course of that investigation discuss with you the circumstances of the purchase of this property by you and the sale of it to the corporation?

A. Not to the best of my recollection, no, not at all.

Q. When was the first time—what was the first occasion you learned that the transaction was questioned in any manner with respect to its tax effect?

A. I believe when I was billed for it.

Q. When you received the Revenue Agent's report?

A. Yes.

Q. And the proposed assessment, is that correct?

A. Yes, sir.

Q. To your knowledge was it discussed either at that time or subsequently either with yourself or with any of the other officers or directors?

A. You mean up to—

Q. Did any Government Agent ever up to this time?

A. No.

Q. Question you about it? A. No.

Q. Or seek to question you about it?

A. No.

(Testimony of Joe Goldstein.)

Q. Or did you ever avoid being questioned about it? A. No, sir. [215]

Q. Or did they ever question your wife, Lillian Goldstein? A. No, sir.

Q. These were, I take it, community funds used in the transaction? A. Yes, sir.

Q. Calling your attention to the fact that the escrow was opened on June 22nd and was not completed until December 8th, was the apartment house being constructed during that period? A. Yes, sir.

Q. Will you state—do you recall whether or not it was required that the apartment house be approved by the Torleys before the close of the escrow?

A. I don't remember that, sir.

Q. You don't recall, all right. Now, at the time that you entered into this transaction, although your brothers had expressed according to you the—and according to Mr. Eddy and according to them—they did not desire to enter the deal, why was it that you subsequently went ahead with the deal, Mr. Goldstein?

A. Well, about that time I was beginning to set up my estate, my wife was being concerned about taxes, death duties, and so forth, and I was advised that I had a liability there that I ought to try to get rid of. [216]

Q. Do you recall who gave you that advice?

A. Oh, gosh, that has been given to me by three or four different people.

Q. I see.

A. Individuals connected with the State Department, the bank, an attorney, and the last—

(Testimony of Joe Goldstein.)

Q. They advised you what?

A. They advised me that in case I was to die my estate also would be liable for the lease there at the San Gabriel property.

Q. What other reasons did you have? I gather you thought it was a good deal.

A. Well, it was a good deal. It was a deal. It was something we ought to just do. It is just unfortunate that it had to be in Las Vegas. It was not of my choosing or my brothers.

Q. Was there any intention upon your part at the time and before you entered into these escrows that you would not permit the corporation to have the deal but that you were going to take the deal yourself. In other words, possibly I haven't put that well, but did you ever have any intention before, at the time you offered it to the corporation, were you willing that they enter the deal?

A. Well, I was willing for them to get into the deal originally. [217]

Q. Yes, that's what I mean.

A. Originally. Then when they didn't want to I still was going to have that deal because I knew I could get a much, much better deal with either the Boys Markets Corporation or somebody else, so I went ahead with the deal.

Q. But originally so far as you were concerned in good faith you were willing that the corporation have the deal?

A. Yes.

Q. Is that correct?

A. Yes.

(Testimony of Joe Goldstein.)

Q. Now, were other objections other than the matter of Las Vegas raised at that time in behalf of the corporation?

A. Yes, there was. Mr. Eddy was very concerned about the negative covenants and so forth in our loan agreement that we have with Provident Mutual. And he was concerned about what our relationship would be with the Provident Mutual if that ever came to light. And I have remembered since today that we were having some other difficulties relating to interstate trade. I had forgotten about that, until today, that was over labor matters or something.

Q. By "negative covenants," I assume you are referring to the provisions in the agreements that the borrowing corporation shall not enter into certain types of [218] transactions.

A. Yes.

Q. Without consent? A. Right.

Q. And in that connection I am going to show you a document entitled "Note Agreement." This does not purport to be the signed original but a copy thereof, an agreement dated October 1st, 1950, between the Boys Markets, Inc., a California corporation, as borrower, and Provident Mutual Life Insurance Company of Philadelphia, as lender, and ask you if this is a copy of the existing agreement at that time including the modifications. There are some modifications indicated here which were made subsequent to 1955, but is this the agreement to which he referred?

A. Excuse me.

Q. I show you this note agreement as I have in-

(Testimony of Joe Goldstein.)

licated and ask you if that is a note agreement to which you refer?

A. Yes, sir.

Q. And this has been produced from the files and records of the Boys Markets Corporation?

A. Yes, sir.

Q. And kept and maintained in the course of the business of that corporation? A. Yes, sir. [219]

Q. And was in effect as of the date throughout the year 1953, is that correct?

A. Oh, yes, yes, sir.

Mr. Campbell: I will ask that this be marked for identification. I will read a pertinent portion from it into the record rather than encumbering the record with the entire document.

The Clerk: Petitioners' Exhibit—

Mr. Greaves: I wonder if we might get this part photostated for the record and submit the document at this time with permission to withdraw it to photostat the significant part.

The Court: How much of it do you want to get into the record?

Mr. Campbell: It is part of one page and part of another.

Mr. Greaves: I have not seen this document at all, your Honor. I don't know what it encompasses. I would like to have a chance to see whether this is being read into the record in the entirety or whether this is a subclause or just what it is.

The Court: I think it would be better to introduce the document in evidence and if necessary withdraw the original.

(Testimony of Joe Goldstein.)

By Mr. Campbell: [220]

Q. This is not in effect now, is it, Mr. Goldstein?

A. Yes, I think this is the last year, 1960. It is still in effect, yes.

Q. This is not the signed original copy. Is there any harm to the operation of the company if this document is gone for a period of time?

A. Well, I would rather it wouldn't be gone.

Q. It might interfere with your operation?

A. It could possibly.

Q. All right.

Mr. Campbell: How close are we to adjournment this afternoon?

The Court: Well, I would like to continue if we can. Are you about finished with Mr. Goldstein?

Mr. Campbell: Well, fairly close. I was going to say I would submit this and let the Government counsel take it with him over the evening recess and possibly we could come to an agreement as to the pertinent portions.

The Court: Well, I would suggest that you have the document itself marked and you tender it, you offer it in evidence, and rather than reading it now if we don't finish tonight, why counsel can take it with him and possibly you can stipulate the parts that you want to get in.

The Clerk: Petitioners' Exhibit 9 marked for identification. [221]

(Petitioners' Exhibit No. 9 was marked for identification.)

(Testimony of Joe Goldstein.)

The Court: Now, do you want to ask questions about that right now?

Mr. Campbell: No, I am just calling his attention to a particular clause which I will identify and then counsel can find that clause during the course of his reading.

Mr. Greaves: Mr. Clerk, what was that?

The Clerk: That was Petitioners' No. 9, marked for identification, counsel.

By Mr. Campbell:

Q. Now, I am directing your attention to Paragraph No. 6 headed "Negative Covenants of the Company," and I am particularly referring to the covenant in Subdivision 5 herein, commencing on Page 9. Now you stated, I believe, that Mr. Eddy raised the question under the covenants of that agreement whether you could legally enter such a transaction, is that correct?

A. That's right, and we all were very much concerned in being sure that we did nothing that raised any questions regarding this agreement.

Q. What was the outstanding amount of the loan approximately at that time?

A. Well, at that time it would have been—'53— [222] \$250,000.00 to \$275,000.00. \$275,000.00.

Q. So that the agreement was in full force and effect so far as its terms were concerned?

A. Yes, sir.

Q. You also mentioned the fact that there was raised the question of whether the construction of such

(Testimony of Joe Goldstein.)

an apartment house would constitute doing business in another state. Who raised that question?

A. Mr. Eddy.

Q. And what was said in that regard among the officers?

A. Well, it's kind of hard to remember just what was said, he did think that it might be just—it might not be doing the right thing, we might be in conflict with this agreement with Provident plus the fact that—

Q. Wait a minute. Conflict with this agreement, you say?

A. With this agreement with Provident.

Q. As to the interstate—

A. That is what I was getting to, and it's awfully hard for me to remember the details but we were about to become involved in some sort of labor matters where the interstate problem was a definite important issue. I don't remember whether it was us alone involved or part of our industry together, a group of us, I can't quite remember. [223] That was raised by Mr. Eddy and he was very much concerned about it.

Q. You have an industry group here? A. Yes.

Q. Composed of all of the large—

A. Leading supermarkets.

Q. Large chain store supermarkets, is that correct? A. Yes.

Q. Were those factors that were considered at that time as to whether or not the corporation should buy the property?

A. Yes, very much so.

Q. Were these matters there that you say were

(Testimony of Joe Goldstein.)

raised by Mr. Eddy to your knowledge explained and discussed to the best of their understanding with the other officers and directors? Did you discuss this with your brothers?

A. Oh, sure. It was discussed with them. How much of it they understood I don't know.

Q. But you are positive that it was discussed?

A. Positive.

Q. Let me ask you this, Mr. Goldstein. Would you intentionally do an act to their detriment and solely for your benefit?

A. I should say not.

Q. I mean you have a close family relationship, [224] is that correct?

A. Very close. To the contrary, you know it is very close. I wouldn't do—I never done—as the record bears out that I have never done anything to hurt them in any way financially or otherwise.

Mr. Greaves: Would you speak up?

The Witness: It must be my throat. I am hollering. I am getting a little worried I might not make it tomorrow. Excuse me.

By Mr. Campbell:

Q. And you are positive that these matters were all discussed in the office there with them before any steps were taken?

A. Oh, yes, definitely.

Mr. Campbell: You may cross-examine.

The Court: Just a moment. Is this your last witness or do you have more witnesses to go?

(Testimony of Joe Goldstein.)

Mr. Campbell: I want to review my notes and I think probably he will be the last witness I will call.

The Court: Well, I guess we will recess until 9:30 tomorrow morning.

(Whereupon, at 4:45 o'clock, p.m., the hearing in the above-entitled matter was adjourned until Friday, January 22, 1960, at 9:30 o'clock, a.m.)

[225]

* * * * *

Los Angeles, California, Friday, January 22, 1960.

* * * * *

The Court: We will resume trial of the Goldstein case.

Mr. Greaves: Before we commence, your Honor, may the record show that of the witnesses subpoenaed by the respondent in this case Mr. Torley is present in court at this time; that Mr. Al Goldstein is on half-hour call; that Mr. Ed Goldstein has been excused until approximately 10:00 o'clock this morning due to a medical consultation he had scheduled, and Mr. Bernard Goldstein is not present. He was informed, of my knowledge, to be present at 9:30 this morning. As for Mrs. Goldstein, I don't know where she is, Mrs. Lillian Goldstein. I don't know where she is this morning, either.

Mr. Campbell: I thought we had had the understanding and agreement that, in view of the illness of the children, that she need not appear.

The Court: How are the children?

Mr. Goldstein: The children are still in bed, but I thought when I left here last night—

(Testimony of Joe Goldstein.)

Mr. Greaves: May I ask the age of these children?

Mr. Goldstein: The children are 8 and 13.

Mr. Greaves: Well, I believe, your Honor, under the circumstances she should probably be excused [228] from this case.

The Court: All right. You will not insist on having her as a witness?

Mr. Greaves: No, your Honor.

The Court: All right. If you want to release her from the subpoena at this time, that will be understood.

Do you know where your brother Bernard is?

Mr. Goldstein: Oh, Mr.—knows where he is at.

Mr. Campbell: Mr. Greaves?

Mr. Goldstein: Greaves. You talked to Bernard and you told him that he should be here by about 10:30, because he has a doctor's appointment.

Mr. Greaves: What about Edward?

Mr. Goldstein: Edward, you said, could be here around 10:00.

Mr. Greaves: I will stand corrected on that, your Honor.

The Court: What about Albert?

Mr. Greaves: Albert is on half-hour call. I wasn't sure which brother was which.

Mr. Campbell: And one brother was released from further appearance.

If the Court please, there is one matter I would like to cover on direct examination, which I did not cover yesterday. [229]

The Court: All right. You may continue.

Mr. Campbell: It won't take a moment.

Whereupon

JOE GOLDSTEIN,

was called as a witness on behalf of the Petitioners and having been previously duly sworn, testified further as follows:

Direct Examination—Continued

By Mr. Campbell:

Q. Mr. Goldstein, in your testimony yesterday you related that in connection with the exchange which you effected of the Las Vegas property for the San Gabriel property, as a part of that transaction, you caused to be built under the terms of your agreement with Torley an apartment house on the Las Vegas property, is that correct? A. Correct.

The Court: May I interrupt?

Sir, are you a witness in this case?

Voice: Yes, sir.

The Court: I think that we had a separation of witnesses, and you better step back in this back room.

Are there any other witnesses in the case?

Mr. Campbell: That is the unfortunate vice of separation of witnesses.

By Mr. Campbell: [230]

Q. I believe you testified that you expended of your own funds the sum of \$28,000.00 for the erection of the apartment house, is that correct? A. Right.

Q. And \$7,000.00 for the purchase of the lot?

A. Approximately.

Q. In that connection did you and your wife, the petitioners, enter into a contract with a builder, John

(Testimony of Joe Goldstein.)

Law, of Las Vegas, Nevada for the erection of that apartment house? A. Yes.

Q. I show you a document consisting of four pages and ask if that is your copy of the contract which you and your wife entered into for the purpose of completing that deal? A. Yes.

Q. I observe that this particular copy is signed and acknowledged by the contractor, and I presume that it is a fact, is it not, that the copy delivered to the contractor was signed by you and your wife?

A. I imagine so, must have been.

Mr. Campbell: This will be offered in evidence as Petitioners' next in order.

The Clerk: Petitioners' 10 marked for identification.

(Petitioners' Exhibit No. 10 was marked for identification.) [231]

Mr. Greaves: Do you have a copy of that?

Mr. Campbell: I don't. May that be withdrawn at the conclusion of trial for the purpose of photostating in order that the Government may have a copy of it?

The Court: Yes. Have you any objections to the admission?

Mr. Greaves: I haven't seen the document, your Honor.

No objection.

The Court: Petitioners' Exhibit 10 will be received in evidence.

(Petitioners' Exhibit No. 10 was received in evidence.)

The Court: Permission will be granted to withdraw the exhibit for the purposes of photostating, and then

(Testimony of Joe Goldstein.)

the exhibit that has been marked will be returned to the file.

Mr. Campbell: Yes. That is the matter I had in mind.

You may cross-examine.

Mr. Greaves: Just a moment, please, your Honor.

The Court: Yes.

Cross-Examination

By Mr. Greaves:

Q. First, may we go into a little background of the [232] Boys Markets, Incorporated? A. Yes.

Q. In what year did you say you started your first market business? A. 1925.

Q. You were age 17? A. Right.

Q. What happened to this business?

Mr. Campbell: If the Court please, I only make one objection. If the Court is going to open it, I will not make further objection. But I object that this is immaterial and remote and has no bearing upon the issues of this case.

The Court: It seems to me it is rather remote, too. I believe you asked the same question. I believe he stated yesterday that the same facts that Mr. Greaves apparently is about to question him on. So I will overrule the objection, although I don't see it is going to give a great deal of benefit to the determination of these issues, but you may proceed.

The Witness: What do you mean?

By Mr. Greaves:

Q. Did you state that this business went into bankruptcy?

(Testimony of Joe Goldstein.)

A. This business almost went into bankruptcy, about [233] the time I was 18, but not being a believer in bankruptcy I was able to survive, and on assignment we paid off; we settled for ten cents on the dollar, and over a period of years I was able to pay off a hundred cents on the dollar, and we are still in business 35 years later. I am 52 now.

Q. I didn't hear that.

A. I am 52 now, 35 years later.

Q. Was this business a sole proprietorship?

A. Well, I started it, yes. At that time I didn't know what a sole proprietorship meant.

Q. In retrospect? A. I would say so.

Q. When did the Boys Markets commence operations as a limited partnership?

A. I can't remember the exact—

Q. The approximate date will be fine.

A. 1936, something like that.

Q. What happened to the sole proprietorship?

A. Oh, it just became a partnership. I sold some of my interest to my brothers and took them in as partners.

Q. Do you recall just generally, not specifically, the source of assets with which the limited partnership started its business? A. The source of assets?

Q. Yes. [234]

A. Well, money that different ones of us had in the bank—if we go back to '36 you might bear in mind that it took very little money. In those days we worked mostly on our reputation and credit, and the dollar

(Testimony of Joe Goldstein.)

bought an awful lot of merchandise. So it didn't take much money.

Q. Who were the partners in the limited partnership? A. Albert Goldstein.

Q. I'm sorry, I can't hear you.

A. Eddie Goldstein, Bernard Goldstein, Albert Goldstein, and Max Goldstein, too, I believe.

Q. And yourself? A. Oh, yes.

Q. Each of these individuals contributed assets to the corporation? A. Of course.

Q. Cash or— A. Yes.

Q. Part of these assets were assets that they purchased from you? A. Yes.

Q. Who determined that this would become a limited partnership? A. Oh,—

Q. You were operating as a sole proprietorship?

A. Yes. [235]

Q. So you determined it would become a limited partnership, Boys Markets?

A. I suppose so, talked it over with the boys, and we decided that was the proper time and proper thing to do at that time.

Q. By the "boys," you refer to your brothers?

A. Yes.

Q. All four of you?

A. You know, there was a period there when Max Goldstein was not with us, and I can't remember if he came in the original partnership.

Q. Can you give the Court an approximate date at which time you and your four brothers were partners in this limited partnership, 1939?

(Testimony of Joe Goldstein.)

A. Well, I would say by 1940—that would be all right, I believe.

Q. Are you familiar with the lease that was executed between your limited partnership and the Torley Land Company in September of 1945?

A. I know the important points about the lease, yes.

Q. Are you also familiar with the assignment of this lease to the Boys Markets, Inc.? A. Yes.

Q. The document that exhibits this assignment—

A. I will the minute I see it. [236]

Q. I now place before you, Mr. Goldstein, Joint Exhibit 2-B in this case, which has been admitted into evidence as a lease executed September 27, 1945 between the Torley Land Company as lessor and the Boys Markets, a limited partnership, consisting of Joe Goldstein, general partner, and Edward Goldstein, and Joe Goldstein, as trustee for Max Goldstein, limited partners, as the lessee, is that correct, sir?

A. I believe it is, yes.

Q. I now show you Joint Exhibit 3-C, which has been admitted into evidence in this case, as the assignment of the aforementioned lease from the Boys Markets, the limited partnership, made up of the partners Joe Goldstein, general partner, and Edward Goldstein, and Joe Goldstein as trustee for Max Goldstein, limited partners; this assignment being from the Boys Markets, the limited partnership, to the Boys Markets, Inc.?

A. Yes.

Q. I wonder if you could explain to the Court why these documents only state that the partners of this

(Testimony of Joe Goldstein.)

corporation were yourself, your brother Edward, and yourself again as a limited partner, trustee for Max Goldstein?

Mr. Campbell: Pardon me. I thought you misstated the question. You said the partners of this corporation.

Mr. Greaves: Partners of the limited partnership. [237] Thank you.

The Witness: And what is it you wish to know?
By Mr. Greaves:

Q. Can you explain why these instruments recite that the limited partnership was made up only of yourself and your brother Edward?

A. Yes. Apparently, they were the partners in that year at that time.

Q. Apparently?

A. They were, when it—it would have stated.

Q. What happened to the partnership interests of the other brothers?

A. Normally, that's very easy. They sold their interests in the meantime.

Q. To whom? A. To me.

Q. Do you recall when?

A. I can't recall exactly when, what year, but surely between some—

Q. Between 1940 and '45?

A. 1939 or '40, '44, '45, something like that; kind of hard to remember exactly.

Mr. Campbell: If the Court please, I don't understand the issue. It was stipulated—

The Court: I would like to suggest that if [238] counsel want to address the Court, will you please stand?

(Testimony of Joe Goldstein.)

Mr. Campbell: I beg the Court's pardon.

The Court: Now go ahead.

Mr. Campbell: I wish to suggest to the Court that the stipulation entered into by the parties here and the Revenue Agent's report both show that the partnership at this particular time consisted of these people who were on these documents. Therefore, this question is incompetent in that it is as to a matter which has been stipulated and agreed to.

The Court: Well, I fail to see how the changes in the partnership have any bearing whatsoever on this. But the respondent seems to have some idea that they will have, and I would rather receive the evidence.

Mr. Greaves: May I be heard on this point just to this respect: That Paragraph 6 (a), Sub 1 of the petition filed in this case, stated that this limited partnership was made up of or consisted of Joe Goldstein, general partner, Edward Goldstein, and Joe Goldstein, as trustee for Max Goldstein, as limited partners. That evidence has been introduced in this case by petitioner to the effect that all the brothers were partners of the corporation; and that the purpose of this question is to determine whether in fact all the brothers were partners in this partnership; and these questions are directed to [239] determine whether in fact there was a time when all these brothers were partners in this limited partnership; and this, to establish control of petitioner, not only of the sole proprietorship, but of the limited partnership, then of the corporation.

Mr. Campbell: If the Court please, the allegation in the petition on Page 3 is that on or about the 27th

(Testimony of Joe Goldstein.)

day of September, 1945 the Boys Markets, a limited co-partnership, consisting of the petitioner Joe Goldstein, as general partner, and Edward Goldstein, and so forth.

The stipulation on Paragraph 5, that on and prior to September 27, 1945 the petitioner Joe Goldstein was the sole general partner in the limited co-partnership, consisting of himself as co-partner and Edward and Joe Goldstein, as trustee for Max Goldstein, limited partners. I submit there is no issue.

The Court: Yes. The petition certainly alleges the partnership consists of those partners as of a certain date.

Mr. Greaves: As I say, your Honor, we are trying to determine—

The Court: Can you enlighten me further what effect any changes in the partnership may have on respondent's claim with regard to this particular income?

Mr. Greaves: Yes, sir. I want to show that this [240] individual had control not only of the sole proprietorship until '36 or thereabouts, when he went into business as a limited partnership, but that he also had control of the financial fortunes of the limited partnership, which was succeeded by a corporation, in which he is the majority stockholder, president chairman of the board, which he also controls, which corporation he sold the subject property to.

The Court: How do you claim that who controlled the partnership has any bearing on who controlled the corporation?

Mr. Greaves: If the Court would indulge—

(Testimony of Joe Goldstein.)

The Court: And, further, he apparently was acting in behalf of the corporation when this transaction took place.

Mr. Greaves: The corporation was the successor of the limited partnership, which was the successor of the sole proprietorship.

The Court: Yes, I understand that.

Mr. Greaves: And the respondent believes at this time that it can develop such facts that will show a control that originated in Joe Goldstein and continued in him through all these business forms, if you will indulge respondent for a few more moments.

The Court: I will do so. Proceed.

By Mr. Greaves: [241]

Q. Then it is your testimony that your brothers, other than Edward, sold their partnership interest to you? A. What brothers?—

Q. Brothers Albert, Bernard, Max,—

A. Albert, Bernard and Max?

Q. Yes.

A. You say that Max sold his interest?

Q. I am asking you if that was your testimony, sir. A. Not Max, I don't believe.

Q. Did Al and— A. Yes.

Q. They sold their partnership interest to you?

A. Yes.

Q. With respect to Max, what happened to his partnership interest?

A. Well, I'd have to go back and look at some records.

(Testimony of Joe Goldstein.)

Q. I am just asking you for your recollection at this time.

A. I can't recollect exactly what happened.

Q. Weren't you in fact a trustee, a limited partner?

A. Yes, definitely.

Q. Do you recall why you became a trustee for Max Goldstein?

A. Yes, I do. If I have to answer that, I would be [242] glad to, but it will take quite a long time.

Q. You can't do it briefly?

A. No. You can't answer personal family problems briefly.

Q. All right. There were personal family problems that led to your becoming a trustee for Max Goldstein? A. Yes.

Q. What year? A. I can't recall.

Q. By 1945? A. Before then, I think.

Q. Who determined that you should become the trustee, rather than Edward?

A. Who determined that I should become a trustee?

Q. The trustee for Max Goldstein, rather than your brother Edward?

A. I would say that Max determined that.

Q. You were the only general partner in this partnership, is that not correct?

A. Yes.

Q. In what capacity did you serve the partnership?

A. Oh, I did a little of a lot of things in the market business. We have the produce department. We have the meat department, the delicatessen department, the liquor department. [243]

(Testimony of Joe Goldstein.)

Q. Weren't you in fact the general manager of the limited partnership?

A. General manager? Oh, no.

Q. Didn't you so testify on direct examination?

A. I didn't finish the answer. You can be a general manager, but I would have an awful lot of assistant general managers.

Q. I believe that your answer is not responsive. I asked you whether or not you were the general manager. I didn't ask you whether you had assistant managers.

A. Well, general manager, you could use that term, yes.

Q. What term would you use?

A. What?

Q. I am asking for your term, what term would you use? A. This was in what years?

Q. Well, from the year the limited partnership commenced operations until it ceased operations, from 1936 or thereabouts to 1946.

A. Well, we were a smaller company at that time, and our business is a very competitive business, and we just don't line out specific duties for each one to do in the market business. You got to be on your toes, working hours and hours a day to stay in business and show a profit. I [244] can't say that there was any specific—if I only had certain duties to do, or any of my brothers, we wouldn't be looking forward to a better than a forty-five million dollar-volume next year, and we wouldn't have a AAA credit rating in Dun &

(Testimony of Joe Goldstein.)

Bradstreet, which we are one of the very few in our business that has.

But it take a hell of a lot of work, Mr. Greaves. It is not a Standard Oil Company or Union Bank or Bank of America, where there is certain people doing certain limited things.

Q. You are president of the Boys Markets, Incorporated, are you not? A. Yes, sir.

Q. Was there a comparable position in the Boys Markets, the limited partnership?

A. Well, we got a little fancier as we became a corporation.

Q. Is it your testimony at this time that you were not the general manager of the limited partnership?

A. I didn't say that.

Q. Would you say you were?

A. What does general manager actually mean?

Q. A man who ran the outfit, who coordinated the activity of the outfit.

A. Coordinated, but you said "ran it." I didn't run [245] it; I did coordinate. I wasn't sure that I knew what you meant by that. I must have been the general manager. Yes, I was the coordinator and general manager.

Q. In this capacity were you familiar with the respective partnership interests of the individuals who were partners? A. Yes.

Q. Calling your attention to the year 1945 when you were general partner and when your brother was a limited partner and you were a limited partner as a trustee, what were the respective interests of the partnership?

(Testimony of Joe Goldstein.)

A. I can't remember that, Mr. Greaves.

Q. Can you give us a general statement?

A. I should say not. I don't see—

Q. Did you own 50 percent of the partnership, more or less?

A. I can't remember exactly what I owned.

The Court: Mr. Goldstein, will you wait until the question is finished, and the same for you. You have been interrupting him before his answer is completed.

By Mr. Greaves:

Q. As a partner, did you share in the profits and the losses of the limited partnership?

A. Of course.

Q. Did the other partners share in the profits and [246] losses of the limited partnership?

A. Why, of course.

Q. Do you recall what percentage of the profits you received? A. Of course not.

Q. Ten percent?

A. I can't.

Q. More? You have a general idea?

A. I do not, and I'm sorry.

Q. All right. A. All right.

Q. The loss was also shared?

A. I can remember this, and don't hold it against me, because I am a good figure man—I am not good on dates—I am proud to say we have never had any loss years.

Q. I direct your attention to the lease agreement between the Boys Markets, operating as a limited partnership, and the Torley Land Company.

(Testimony of Joe Goldstein.)

A. Yes, sir.

Q. If you want me to present that to you, I will do so. Would you like to have that lease before you?

A. No.

The Court: It is here for his reference if he wants it.

The Witness: I don't need it. [247]

By Mr. Greaves:

Q. I believe that you testified on direct examination that you were the representative of the limited partnership in the negotiations for this lease with the Torley Land Company, is that correct?

A. Yes.

Q. And may I assume that you are generally familiar with the terms of this lease at this time?

A. The high points, the ones that count, I am.

Q. I now call your attention to Paragraph 15 of the lease, which is at Page 22, if you would like to refer to it, and ask you if that is the paragraph that you have testified to with respect to being personally liable under this lease to the Torley Land Company, in the event of defaults and one thing and another?

A. I guess I will have to look at it.

I would say so.

Q. Was your personal liability under this lease ever asserted against you by the Torley Land Company?

A. How could it have been?

Q. It was not?

A. What do you mean by "asserted" against me? I have trouble with—

(Testimony of Joe Goldstein.)

Q. Did the Torley Land Company make a claim against you at any time during the period of this lease, on the basis [248] of your personal liability?

A. They let me know that I had it in a letter—in a letter that was sent to us by the Torley Land Company.

Q. Did they make any claim against you?

A. How could he make a claim against me? Again what? I hadn't defaulted on anything. No one had defaulted. So apparently he didn't.

Q. Is it your testimony that he did or that he did not? A. Did not.

Q. Thank you. I believe you stated a few moments ago that you were the general manager of the limited partnership, insofar as coordinating its activities were concerned, and you were also the general partner of the limited partnership? A. Right.

Q. By virtue of your position, would it be accurate to state that you were the guiding genius of the Boys Markets? A. Quite a compliment.

Mr. Campbell: I am going to object to the form of that question.

The Court: You don't have to explain what you mean by that.

Mr. Campbell: I object, it is incompetent.

The Court: Sustained.

By Mr. Greaves: [249]

Q. Who was responsible for the success of the Boys Markets? A. Who was responsible?

Mr. Campbell: I am going to object as immaterial, if the Court please.

(Testimony of Joe Goldstein.)

The Court: I will overrule the objection.

The Witness: The question again?

By Mr. Greaves:

Q. Who was responsible for the financial success of the Boys Markets in various business forms?

A. I would say that Albert, Bernard, Edward, Max Goldstein and Joe Goldstein.

Q. Would it be correct to state that you were the only member of your family that was with the Boys Markets from its inception in 1925 up to and including to date?

Mr. Campbell: Objected to as assuming a fact not in evidence, that the Boys Markets was in existence in 1925.

The Court: I will sustain the objection. I can't see the materiality or the relevance of such a question to this issue.

Mr. Greaves: All right.

By Mr. Greaves:

Q. Who initiated the idea, insofar as the members of the limited partnership were concerned, that the San [250] Gabriel property should be leased from the Torley Land Company?

A. Who initiated the idea that it should be leased?

Q. Among the boys.

A. Among the boys, oh, I would say—if you would say who should lease it, I can answer. I am sorry. Maybe I can answer it this way: Mr. Eddy had quite a lot to do with convincing us that we should have a lease. We should accept the ground lease.

Mr. Greaves: I asked who initiated the idea, your

(Testimony of Joe Goldstein.)

Honor, not who convinced the other members that they should lease the property.

The Witness: I would then have to answer that I did. That would be the proper answer.

By Mr. Greaves:

Q. As between yourself, as the representative of the Boys Markets, in this lease transaction, and the Torley Land Company, who initiated the idea that the Boys Markets should lease this San Gabriel property?

A. Between—

Q. Did you or did Torley Land Company originate the idea? Did you go to Torley, in other words, or did Torley come to you?

A. I went to Torley.

Q. Do you remember who represented Torley in those [251] lease negotiations?

A. Mr. Torley.

Q. Mr. Joseph or Mr. Ray?

A. No, Joseph Torley. Mr. Ray Torley might have entered in some at different times.

Q. With whom among the members of the limited partnership did the idea originate that the limited partnership should cease operations?

A. Limited partnership should cease operations? You say whose idea was it among us?

Q. Yes. A. Probably mine.

Q. You can't be any more specific than that?

A. Well, no.

Q. Was it yours or was it not, in other words?

A. No, because I didn't insist on it. It was dis-

(Testimony of Joe Goldstein.)

cussed and I probably broached the idea, and so it became—

Q. That would be as close as you could come?

A. Don't put words in my mouth.

Q. I am asking for a more specific answer.

A. I can't give it to you any more specific.

Q. Then you discussed this matter with the boys?

A. Yes.

Q. What reasons did you give the boys? [252]

Mr. Campbell: I am going to object. I wish to interpose an objection, again, that all of this is immaterial to the issues here, no bearing upon the issues.

The Court: I will overrule the objection.

The Witness: Now, you want to ask me that again?

By Mr. Greaves:

Q. What reasons did you give to the boys for that change of business form?

A. Well, to the best of my recollection, I think I told them that, on the advice of Mr. Eddy and some of our auditors, that that would be the logical thing for us to do; the time had come to change over to a corporation.

Q. Did you discuss the reasons that the auditors presented to you?

A. We discussed some of the reasons, yes.

Q. Who determined that the assets of the limited partnership should be traded or exchanged for stock in the corporation?

A. I don't know, I guess we took the advice of our advisors. I can't say who initiated it.

(Testimony of Joe Goldstein.)

Q. Would you say your advisors initiated it?

A. What?

Q. Would you say then that your advisors initiated this idea and convinced you of its wisdom?

A. Oh, definitely. [253]

Q. What reasons were given to you for the receipt of stock in exchange for the assets, rather than outright sale?

A. This could take an awful long time. I would be glad to answer.

The Court: Just a moment. Mr. Greaves, if you are simply trying to develop who had the idea and carried through the chain from partnership form to corporate form, there might be some relevance to it, but I fail to see the necessity of going into all these details.

Mr. Greaves: All right, your Honor. Strike that question.

By Mr. Greaves:

Q. Can you tell the Court the approximate value of assets of the corporation?

A. No. I would just be making a guess. I don't keep those figures in my mind.

Q. Can you recall approximately how many shares of capital stock of the corporation, the partnership received?

A. Believe me, I can't.

Q. Do you know the par value of that stock on the date of the exchange?

A. I'd have to make a guess.

Q. Would you make a guess?

(Testimony of Joe Goldstein.)

A. A hundred dollars. [254]

Q. A hundred dollars a share?

A. Par. I am guessing.

Q. Do you know what the number of authorized shares of capital stock—

A. No, I do not, offhand.

The Court: If these matters are relevant at all, it seems to me that the documentary evidence would be the best evidence.

Mr. Campbell: If the Court please, these matters are contained in the stipulation as to the 5500 shares and how and in what manner they were issued.

By Mr. Greaves:

Q. Did you receive any shares of stock from the partnership in this exchange, as a result of this exchange?

A. I must have.

Q. You don't recall?

A. I transferred my interest in the partnership to the corporation. I didn't do it for nothing.

Q. Did Edward also transfer his shares?

A. Why, of course.

Q. And Max?

A. I can't remember just what happened exactly with Max. As I say, we had a family problem and—

Q. Did he get shares of stock as a result of this transfer? [255]

A. Trustee, somehow, yes, I believe so, Mr. Greaves. The Trustee—it is awfully hard to remember. I am not trying to evade it.

Q. Did you testify that you were the chairman of

(Testimony of Joe Goldstein.)

the board of directors of the Boys Markets, the corporation?

A. Not as an officer, as such. I have acted as chairman at a lot of our board of directors' meetings.

Q. And other directors have also acted as chairman?

A. Oh, I wouldn't remember. I imagine at times it would have been very common for such a thing to occur.

Q. Now, moving to the events leading up to your acquisition of the San Gabriel property from the Torley Land Company, I believe you stated on direct examination that you initiated the negotiations?

A. Yes.

Q. With Mr. Joseph Torley? A. Yes.

Q. When you ran into him at Santa Anita?

A. Right.

Q. Do you frequently go to Santa Anita, or was that just a chance—

A. Do you really care?

Q. I just wondered if this was just a chance meeting.

The Witness: Do I have to answer that?

The Court: No, I don't think so. [256]

By Mr. Greaves:

Q. I believe that you also testified on direct examination that you commenced these negotiations with Mr. Joseph Torley late in December of '52 or early January or early in 1953, January?

A. Yes, I think that's the right time.

Q. I believe you further testified with respect to

(Testimony of Joe Goldstein.)

these negotiations that it would be hard to say who originated the idea of the trade, is that correct?

A. I did say that, yes.

Q. Why is it hard to say?

A. Why is it hard to say? You know, well, to expedite this, I'll say I now remember that I did.

Q. You also testified that for sometime, indefinite amount of time prior to meeting Mr. Torley late in '52 or early '53, you had tried to purchase this land from the Torley Land Company for cash?

A. Oh, yes.

Q. But that he was unwilling to sell?

A. That's right.

Q. Did Mr. Ray Torley take part in these trade negotiations?

A. Well, Ray and J. B. are good horse traders.

Mr. Campbell: Pardon me. That can be answered "Yes" or "No." [257]

The Court: Yes, please.

The Witness: Yes.

By Mr. Greaves:

Q. Now, with respect to the board of directors' minutes that were placed in evidence by reading yesterday, the minutes for the January 27, 1953 and January 28, 1953 meetings, are you familiar with the fact of these minutes at this time?

A. Yes.

Q. Are you also familiar with their content, that is, not in direct language, but the effect?

A. Yes.

Q. Are you familiar with their form?

(Testimony of Joe Goldstein.)

A. Yes.

Q. Can you recall at this time whether the entire board of directors attended these two meetings?

A. No, I can't recall whether the entire board attended those two meetings.

Q. Did your wife attend these meetings, to your knowledge at this time?

A. To my knowledge, I don't know whether she did or not. I really don't know.

Q. Do you recall whether these meetings were formal?

A. Well, they weren't, probably were not formal.

Q. Were minutes kept for each and every meeting of [258] the board of directors of the Boys Markets, Incorporated? A. No.

Q. Would it be accurate to state that the board of directors held more meetings without minutes than in which minutes were maintained?

A. Oh, no.

Q. Who on the board of directors is responsible for keeping the minutes of these meetings?

A. Mr. Eddy.

Q. Were you in court yesterday when Mr. Eddy testified that he made these—and I refer you now to the minutes, first, of the January 27, 1953 meeting?

A. Yes.

Q. And, secondly, the April 28, 1953 meeting?

A. Yes.

Q. And ask you now if you recall Mr. Eddy's testimony that those minutes were recorded from notes, and

(Testimony of Joe Goldstein.)

that they were recorded anywhere from a week to a month after the meeting?

A. You mean these particular meetings?

Q. Yes.

The Court: The question is, do you recall his testimony to that effect?

Mr. Campbell: I am going to object then to the question in that form. The record will speak for itself, [259] if the Court please.

The Court: I will overrule the objection.

Mr. Campbell: It may be a preliminary thing.

The Witness: I was in the courtroom when I heard Mr. Eddy. Now, was his testimony about just these two meetings?

By Mr. Graves:

Q. Yes.

A. Or all the—

Q. These two meetings were all that we were talking about at that time.

A. Yes. They were notes; notes were made during the meeting, to the best of my recollection; possible that minutes were kept, also. But, to my recollection, it would be notes.

The last few years—

Q. And that those notes were transcribed in this form anywhere from a week to a month later?

A. No.

The Court: Are you asking him still whether he was in the courtroom and recalled Mr. Eddy's testimony?

Mr. Graves: Yes.

(Testimony of Joe Goldstein.)

The Court: Do you understand what he is asking you?

The Witness: yes. [260]

By Mr. Greaves:

Q. Do you recall that testimony?

A. Yes.

Q. I wonder if you would look at those notes and inform me whether or not there is a date of recordation on those notes, that is, that they were entered a week after each of the meetings or a month after each of the meetings? A. What notes?

Q. The minutes. I am sorry.

A. This was held April 28, 1953, 2:00 p.m., and you want me to—what is your question?

Q. I would like to know if there is a date other than that date on there, which is the date these notes were transcribed in this form.

A. You want me to read this? Well, I will read it and see if there is one. I don't know.

Mr. Campbell: Is that a matter we can stipulate to, rather than his examining the record? You say there is no other date?

Mr. Greaves: Right.

Mr. Campbell: I will agree there is no other date.

By Mr. Greaves:

Q. Did you take part in both of those meetings as a director of the corporation? [261]

A. Yes.

Q. In the meeting of January 27, I believe, the minutes note the fact that it would be possible to purchase the San Gabriel property, is that correct?

(Testimony of Joe Goldstein.)

A. I don't think so. It stated it might be possible to purchase the land now under lease on which we built the San Gabriel market, and that the purchase of this land would enable us to procure a loan on the property and increase our working capital.

Q. That is the meeting of January 27, 1953. Does that president refer to you? A. Yes, sir.

Q. Would you tell us what additional information with respect to the San Gabriel property you furnished the board of directors at the April 28th meeting, and I refer you specifically to the second page of the minutes, and I believe the second or the first full paragraph on that page, and the last sentence.

A. Oh, yes.

Q. I will ask if you will read that.

A. About the possibility of purchasing the land on which the San Gabriel—

Q. Would you just read that portion?

A. "It has now been decided that Joe Goldstein and Lillian Goldstein would buy this land as their private [262] property, and they may at sometime in the future sell it to the Boys Markets."

Q. Can you tell me whether the deal that you had made with Torley was a definite and certain deal as of April 28, 1953?

A. No—April, '53?

Q. April 28, 1953.

A. Can I ask—I would like to know the date that we went into escrow.

Q. June 22, 1953.

A. Then in April, '53 it was not a definite deal.

(Testimony of Joe Goldstein.)

Q. I believe you testified on direct examination that the reason why this deal wasn't consummated sooner than June 22, 1953 was the fact that Mr. Torley was a shrewd businessman and a hard bargainer?

A. Right.

Q. Did you also testify that he reneged on a couple of deals?

A. Yes, a couple offers.

Q. On the same property? A. Yes.

Q. When did you say that Ray Torley told you Torley Land Company would accept only Las Vegas property in exchange for its San Gabriel lot, the approximate date?

A. Of when he told me? [263]

Q. Yes.

A. That would be in early '53.

Q. Prior to April 28, 1953 or subsequent thereto?

A. Prior.

Q. But you weren't sure at April 28, 1953 whether or not in fact you would be able to purchase this land, were you?

A. Right.

Q. Why were you so desirous of acquiring the San Gabriel property?

A. The main reason for acquiring it was to get from under that personal liability that I was advised I ought to get out from under. That was one of the main reasons.

Q. In your negotiation with Ray Torley for this property, isn't it a fact you stated you wanted this

(Testimony of Joe Goldstein.)

property in order to secure loans with which to build further markets?

A. Well, now, I don't want to go into detail.

Q. I am just asking you this question. You can answer it "Yes" or "No." Did you or did you not state in effect that you wanted this land in order to secure loans for the building of further markets?

A. I would like to answer it this way: I must have said that, among other things, sure. [264]

Q. That's fine.

A. Yes.

Q. And after you heard or learned that the Torley Land Company would only accept Las Vegas property in exchange for the San Gabriel property, you so informed the other members of the board of directors?

A. Yes.

Q. And that is the information you gave them that is recorded in the April 28, 1953 meeting, is that correct? A. Yes.

Q. At what time did you know the amount of money that would have been spent for the Las Vegas property, and improvement thereon? A. What?

Q. And improvement on that property?

A. When did I know absolutely?

Q. Yes.

A. About one minute after the escrow papers were signed.

Q. And this was because Mr. Torley was such a shrewd operator?

A. Not necessarily. In my experience in property deals, and a lot of others, I never know I had a deal until the papers are signed.

(Testimony of Joe Goldstein.)

Q. With whom did you negotiate as to a definite [265] amount to be spent for this property and improvement?

A. Most of it was spent with J. B. Torley, the father.

Q. Did you have to satisfy his desires as to the lot and the building to be erected thereon?

A. Yes, sir.

Q. And part of the negotiation then would have to be in bargaining over the lot and bargaining over the specs for the building? A. Right.

Q. Now, you say that you advanced the idea of an exchange of properties to the Torley, to Mr. Joseph Torley? A. Mr. Joseph Torley.

Q. Or to the Torley Land Company? A. Yes.

Q. Did you also get the fancy idea that this would be a tax-free exchange?

A. Possible.

Q. Did you testify earlier in this case that the Torleys' basis in this land would be very low?

A. . Yes, sir.

Q. Was it your purpose in acquiring this San Gabriel property from the Torley Land Company part of an over-all plan by means of which you could realize \$40,000.00 tax-free income, your corporation to get a stepped-up basis in this [266] property of \$75,000.00 and the Torleys could delay the date of reporting again on the sale of this property?

A. Well, I am glad you asked that question. We originally started out to buy this property.

(Testimony of Joe Goldstein.)

Q. We?

A. I would say—I don't know whether it was a limited partnership at that time or a corporation, but whatever the status of the group of us boys were at that time, Mr. Torley accepted a figure, approximately \$25,000.00, for the land.

I went out there and took a cashier's check out to Mr. Torley, and there was no deal.

So we waited a few moments, and I came out with a check of \$35,000.00 and another one of \$50,000.00. When I got through negotiating over the thirty-five, I saw there was no use of bringing out the \$50,000.00 check. So I went back to my office and reported to the boys that this old boy was too rough for me, and tore up the checks.

There were no more negotiations for months, might even have been a year, and I accidentally ran into him, and in the course of kidding each other—and I still wanted this property—"No, I'm not going to sell it. My tax rate would be high."

And "Well, Mr. Torley, maybe a trade?"

And "Well, I would have to think about it." [267]

Well, that was enough. We might have had another call or two. I might have run into him again. I wanted the property. Probably talked to Ray Torley in Ontario, found out then his dad had moved up to Las Vegas.

Q. Do you recall the date of this?

A. No. Mr. Ray Torley thought maybe the old man might be interested in a trade, but it would have to be in Las Vegas.

(Testimony of Joe Goldstein.)

“All right, fine, see what we can do.” And we left.

I reported back to the rest of the directors that this was the situation. It was going to have to be a trade in Las Vegas, and I wondered then what would happen. I didn't like the idea and neither did any of the other boys, but we still wanted to acquire the fee.

I missed something. I got ahead of myself. I tore up those two checks. We got into a discussion, and I walked out with a deal paying him \$800 a year rent for 50 years on a piece of property slightly under three acres.

I called him the next morning and I said, “J.B., you got the worse of this deal. I think now you ought to see your attorney, talk it over, and let me buy it.”

And his attorney, to the best of my recollection, tried to convince him that he should sell it to the Boys Markets, and not that 50-year lease at \$800 a year, but [268] I guess his pride was hurt or something, and you just couldn't talk to him, and the deal went through on this ground lease, see.

Now, when we get—I still wanted the fee. It is much better, in my opinion, to own the fee than to have a ground lease, regardless of what reasons you might have in mind.

Q. Let me interrupt you at this point to ask you what you mean by it is much better in your opinion to own a fee, and specifically for whom to own the fee?

A. In most cases, for anyone, would rather own the property than have a ground lease.

Q. When you refer to “we,” in this narrative, are

(Testimony of Joe Goldstein.)

you referring to your corporation rather than to yourself and your wife?

A. No, the corporation, of course.

Q. In this narrative would you specify?

A. Corporation.

Q. Right, and yourself, where these might become important distinctions to be made?

A. Not necessarily.

Q. Will you as you progress from hereon, in discussing this matter, say, "It would be a good idea for the corporation" or "for Mr. and Mrs. Goldstein." Thank you.

A. So we then—in our meeting, of course, the boys [269] wanted no part of it, of going up to Las Vegas, and I wasn't too happy going up there myself, but I had this personal liability that I was stuck for, and, as I said yesterday, it came more to my attention as I got into settling, trying to put my estate in proper shape.

So I made a couple of trips up there, engaged a real estate man, gave him the story, and had him look up Mr. Torley, and we finally found the lot and agreed on the price and went ahead with the deal, and, luckily, it was closed.

When I went up there and started negotiations with Mr. Torley, I did not know whether I would pay \$35,000.00, \$50,000.00, \$75,000.00, had no idea.

Q. Do you recall the date that you went there or the dates, just approximately? Was this after April of '53?

(Testimony of Joe Goldstein.)

A. Oh, no, before. It would have to be before April, April, May, June.

Q. Now, you were looking for property to try to satisfy Mr. Torley during this time?

A. Yes.

Q. And you say you went up to Las Vegas on two occasions, to the best of your recollection?

A. At least two.

Q. More than two, possibly?

A. Possibly. [270]

Q. In any event, the trip or trips that you made to Las Vegas were before April of '53, or would they be between January and the time these escrows were closed, without trying to pin it down definitely?

A. I would say around April.

Q. April, May,—May, as well?

A. Probably.

Q. June up until the 22nd?

A. Our deal was closed then. Was that when our escrow was closed?

Q. Yes.

A. I might have been there in June.

Q. You were discussing having gone up to Las Vegas.

A. And we consummated the deal. That was the end of it.

Q. And you consummated the deal in Las Vegas?

A. Yes.

Q. You came back to Los Angeles?

A. Right.

(Testimony of Joe Goldstein.)

Q. Did you go out to Ontario to open these escrows?

A. I went out or sent Mr. Eddy out.

Q. Mr. Torley came in from Las Vegas for that purpose? A. Presume so.

Q. You state that one of the reasons, I think you [271] stated this a little more clearly on direct examination yesterday, one of the reasons that the board of directors was opposed to the purchase of this Las Vegas property for exchange with the Torley Land Company for that San Gabriel property was that Torleys demanded property in Las Vegas, right? A. Yes.

Q. And nowhere else? A. Nowhere else.

Q. And is it also correct that you testified that you and your brothers didn't want any part of Las Vegas for personal reasons? A. That's right.

Q. Which brothers felt this way, in addition to yourself, all of them? A. Yes.

Q. Did Everett Eddy have the same view, to your knowledge? A. Oh, he didn't express that.

Q. Can you honestly say, as a reasonable man, Mr. Goldstein, that as a reasonable reason for a director of a corporation to turn down a possible business deal because it entails going to an area, or the possibility of his having to go to the area, or a possibility this corporation will then become involved in an area that he personally [272] doesn't like?

A. Absolutely, yes; in my case, in our case.

Q. Isn't it a fact that there would have been absolutely no reason for your brothers to have gone to Las Vegas if the corporation had purchased this property?

(Testimony of Joe Goldstein.)

Mr. Campbell: Just a moment. I am going to object as calling for his conclusion, as to the reasons for his brothers going to Las Vegas.

I will further object that it is immaterial and argumentative, if the Court please.

The Court: I think you can ask him—the question seems to be directed as to whether there would have been any fee for any one of the individuals to go to Las Vegas, had the corporation bought the property, I mean, entered into this transaction.

Mr. Greaves: May I rephrase the question?

The Court: Yes.

By Mr. Greaves:

Q. As the president of the corporation, would there have been any corporate reason for any of your brothers to have gone to Las Vegas, connected with the purchase of this property, if the corporation had in fact purchased it?

Mr. Campbell: I am going to object again on the grounds of materiality, and my objection is based upon this, your Honor, that whether or not the reasoning of the [273] other members of the board of directors in declining the deal was valid or reasonable or was based upon valid assumptions or was good or bad business, I submit, is immaterial to the issues of this case. I object upon the ground that this question is immaterial.

The Court: Well, I don't understand the question quite the same way you do. He has simply asked if there is any corporate reason for any one of the members of the board of directors or the brothers to have gone to Las Vegas had this transaction been entered

(Testimony of Joe Goldstein.)

into by the corporation. I think that may be very material. I will overrule the objection.

The Witness: Yes, there could have been reasons.

By Mr. Greaves:

Q. There could have been reasons? A. Yes.

Q. Would you have gone to Las Vegas for your corporation to negotiate on this property?

Mr. Campbell: Again, I object on the grounds that it is immaterial and speculative, if the Court please.

The Court: I think it is speculative. I will sustain the objection to the question in that form.

Mr. Campbell: May we have the morning recess at this time?

The Court: Well, just a moment. How much more [274] cross-examination?

Mr. Greaves: I contemplate not too many more questions, your Honor, but I think that it might be a good idea to break at this time.

The Court: All right. We will recess for five or six minutes.

(Short recess taken.)

The Court: Proceed.

By Mr. Greaves:

Q. I believe the last question you answered, Mr. Goldstein, had to do with reasons, corporate reasons, that would have taken your brothers to Las Vegas in the event the corporation had purchased this property.

A. And I answered yes.

Q. Would you list the reasons?

A. It's awfully hard to list the reasons, because they are so speculative. There could be just numbers of

(Testimony of Joe Goldstein.)

reasons, numbers of things that could come up when you get involved in building something. You just don't know what those reasons would be, but there is always that calculated risk.

Q. Did you go to Las Vegas with respect to negotiations on this property with Mr. Torley?

A. Oh, definitely.

Q. Did you go to Las Vegas after the escrows had [275] been entered with respect to this property?

A. Yes.

Q. Did you go to Las Vegas with respect to the erection of the building?

A. I went up there once for that reason, yes.

Q. Your brothers had some personal reason for not liking Las Vegas, is that correct?

A. That's right.

Q. But it was worthwhile for you as an individual to overlook this personal reason in a personal transaction?

A. Well, I had quite a bit to gain. I had to get out from under.

Q. Would the corporation—

Mr. Campbell: Again, he did not finish his answer.

The Court: Yes. Will you read the answer as far as it goes?

(The record was read.)

The Witness: Personal liability.

By Mr. Greaves:

Q. Wouldn't the corporation have had something to gain in this transaction?

(Testimony of Joe Goldstein.)

Mr. Campbell: Objected to as argumentative.

The Court: Overruled.

The Witness: Would the corporation have anything [276] to gain? At that time it was very speculative whether they would or not, because we must remember we had never at no time knew how much money it would take to finish up this deal, up until the time the escrow was closed.

By Mr. Greaves:

Q. Was there any reason to believe that the deal would be less advantageous to the corporation than it was to you personally insofar as the amount of money that would be required to be spent in Las Vegas was concerned?

A. Well, again, it depended on what the price of the property would be.

Q. Now, are you through? A. Yes.

Q. You negotiated with the Torleys in your personal capacity both in Los Angeles and in Las Vegas?

A. Right.

Q. Would you not have been willing to negotiate with the Torleys in your capacity as president of your corporation?

A. Oh, I believe I would have.

Q. So you could have gone to Las Vegas for your corporation, as well as for yourself?

A. I wouldn't have—without that personal liability in there, I might not have been in such a hurry to get it done. [277]

You must remember, the rental paid on the property wasn't bad.

(Testimony of Joe Goldstein.)

Q. Is it your testimony at this time that the only reason you went to Las Vegas was to avoid the liability involved in the Torley lease?

A. I'd have to answer yes. That's what it was.

Q. Did it occur to you that you would have avoided the liability under the Torley lease if there was no lease?
A. Say that again.

Q. Did it occur to you that you would have avoided the liability under the Torley lease if there had been no lease in existence?

A. I can't understand what you mean.

Q. All right, Mr. Goldstein, let me try it this way then, if I may: I know you are not a lawyer, Mr. Goldstein. Therefore, I do not seek a legal interpretation on your part, but, rather, as an experienced businessman and a man who has had admittedly dealings in property, personally, and as the representative of the Boys Markets, I would like your opinion on this question. Do you understand?

A. Yes, I understand.

Q. . What would have been the effect had your corporation first purchased the San Gabriel property?

Mr. Campbell: Just a moment.

The Witness: Let me answer. [278]

Mr. Campbell: Just a minute. I am going to object, if the Court please. That calls for a legal conclusion and calls for a conclusion in the form of the present question, as immaterial. It has no bearing upon the issues of this case, what his opinion was in that regard. The liability is a matter fixed by law and can be deter-

(Testimony of Joe Goldstein.)

mined from the instruments which are here before the Court.

The Court: I think the question calls for a legal conclusion, and certainly this witness isn't qualified to give a legal conclusion as to the legal effect of it. However, if this entered into his thinking in any way as to why—he stated that this was one of the principal reasons for his being willing to go into this transaction individually, and I think this is simply a question directed as to his thinking, not as to the actual legal effect, as to the acquisition of the property by the tenant.

Can you answer the question?

The Witness: If she will read it back to me again.

Mr. Greaves: Would it be permissible to rephrase it?

The Court: Yes.

By Mr. Greaves:

Q. What would have been the effect on the Torley lease if the Boys Markets, the lessee, had purchased the San Gabriel property, which was the subject of the lease? [279]

Mr. Campbell: I must object again.

The Court: I will sustain the objection. I don't think you have laid a foundation for that question.

Mr. Greaves: Would you repeat the first question I asked this witness?

Mr. Campbell: If you want to say, "What did you believe the effect to be," I will have no objection to the question.

The Court: That is right. Rephrasing the question asks for only a legal conclusion. I will sustain the ob-

(Testimony of Joe Goldstein.)

jection to both the first question asked and the most recent.

By Mr. Greaves:

Q. What do you believe would have been the effect on the Torley lease? A. If what?

Q. If the lessee had purchased the property that was the subject of the lease?

A. I would have been out—my thinking would be that I would be out from under the liability, personal liability.

Q. Then would it have made any difference in your belief whether you personally or the corporation purchased the property?

A. I don't think it would have made any difference [280] if the property would be purchased, but Mr. Torley would not sell the property.

Q. By "purchased," in this case, I mean purchased for property in Las Vegas.

A. That I can't—that becomes complicated.

Q. Just insofar as—

A. I can't answer that. That one I can't answer.

Q. But in fact you went to Las Vegas on a number of occasions to negotiate with the Torley Land Company in this personal transaction? A. Yes.

Q. The record in this case contains many references as to the aversion or dislike of your brothers and yourself for Las Vegas.

Would it be a fair statement to say this was all just personal feeling?

A. Feelings—personal feelings?

(Testimony of Joe Goldstein.)

Q. Just a personal viewpoint? They didn't like Las Vegas?
A. Sure, that's right.

Q. Did you as a director of the corporation reject your corporation's purchasing this property, San Gabriel property, because it required exchanging for property in Las Vegas?

A. I think it was known that it made no difference [281] to me whether the corporation got involved or not.

Q. Now, on direct examination this morning I believe you testified with respect to a contract for the erection of a building on property in Las Vegas that you were a party to, is that correct, sir?

A. Yes.

Q. Do you know what I make reference to?

A. Yes.

Q. Couldn't your corporation have entered this contract, as well as you?

Mr. Campbell: Just a minute. I am going to object to that. That is calling for a legal conclusion. If counsel wants a legal answer, the answer is, of course, the corporation could have entered into a contract for the erection of the building.

The Court: I don't know that it necessarily calls for a legal conclusion. I will overrule the objection. I don't assume that you are looking for an answer as to whether they could legally have done it or not, but whether the corporation, as opposed to the individual, might have made a contract for this building?

Mr. Greaves: Yes.

Mr. Campbell: Wouldn't that be a matter of what was within the powers? Whatever is within the powers

(Testimony of Joe Goldstein.)

of the corporation, of course, the corporation could do. [282] Whether they choose to do those things or not, of course, is a different question. But when you say could the corporation have entered into such a contract, it calls for what are the powers of the corporation; what powers does the corporation have. The powers of this corporation, so far as I know, embrace the entering of all types of contracts having to do with the acquisition of property or the construction. I will so stipulate.

Mr. Greaves: That is satisfactory, your Honor.

By Mr. Greaves:

Q. I believe you testified here a few minutes ago with respect to negotiations with Mr. Torley relative to purchasing the San Gabriel property for cash, do you recall? A. What was that?

Q. I am just trying to refresh your—

A. What was that, again?

Q. That you testified regarding negotiations and, I believe, two deals you had cooking with Mr. Torley?

A. Yes.

Q. Relative to the purchase of the San Gabriel property for cash? A. Right.

Q. And that he rejected these offers, and at one time I believe you testified further that at one time you [283] went to Mr. Torley with a \$35,000.00 cashier's check, is that correct? A. Correct.

Q. And that he rejected that, and that after his rejection you not only destroyed the cashier's check for \$35,000.00, but also a cashier's check for \$50,000.00 that you had brought along with you?

(Testimony of Joe Goldstein.)

A. A personal check; not a cashier's check, a regular check.

Q. These were not cashier's checks?

A. All but one. The fifty thousand was not a cashier's check. The others were, thirty or thirty-five thousand was.

Q. You tore this check up, I believe you testified?

A. Yes.

Q. Are you in the habit of tearing up cashier's checks?

A. I don't mean I tore it up. It was turned in. I tore up the other one.

Q. I believe you stated on direct examination that as another reason for the board of directors' rejection of the exchange of properties, it had something to do with involving your corporation in interstate commerce if it purchased Las Vegas property, is that correct?

A. Yes. That's one of the reasons why I thought [284] the corporation should forget about it. That was when Eddy interjected his thoughts that if the corporation was to engage in anything that was of an interstate nature, we might be in violation of our Provident Mutual Insurance loan.

Q. I am only speaking now of involving your corporation in interstate commerce.

A. That's what I mean. That's what it is.

Q. Did you consult a lawyer on this matter?

A. Mr. Eddy must have gotten some advice on that. Those things are always left up to him.

Q. But you did not consult a lawyer?

A. I did not, no.

(Testimony of Joe Goldstein.)

Q. But this was another reason why you as a director felt the corporation shouldn't purchase this Las Vegas property?

A. I would have to say that had a lot of bearing, yes, that helped to make up my mind.

Q. So, in fact, you did have some feeling on the matter of your corporation's purchase of this property, didn't you?

A. On the purchase of it, yes, I had some feeling.

Q. That is, the purchase of the Las Vegas property?

A. Oh, I thought you meant the Valley Boulevard property. Then would you ask me that again? [285]

Q. Then you must have had some belief as a director that your corporation should not have purchased Las Vegas property, and this transaction did make a difference to you? A. Yes.

Q. Did Mr. Eddy in explaining this involvement in interstate commerce, to your knowledge, base his advice, as expressed to the board of directors, on legal advice?

A. Not necessarily.

Q. Well, —

A. I wouldn't know whether it was on—

Q. That's fine. Now, as another reason for your decision as a director of the corporation for rejecting this exchange proposition for your corporation, I believe you stated something having to do with the Provident Mutual Insurance Company of Philadelphia?

A. Yes.

Q. Could you explain this to us?

(Testimony of Joe Goldstein:)

A. Well, not too easily, but we have—there is a number of negative covenants in there that are just too hard for me to explain it to you or anyone else. But they look kind of forbidding.

Mr. Greaves: Your Honor, I have not had sufficient time to read this entire note agreement between the Boys Markets, Incorporated and the Provident Mutual Life [286] Insurance Company of Philadelphia, that is before this Court as Petitioners' Exhibit No. 9, I believe, for identification only.

I have, however, looked at that portion of this agreement that was pointed out to me by petitioners' counsel, that is, 6(a), 6 and (a), thereunder, and would request your permission to have the petitioner at this time read those provisions into the record, Paragraph 6 and (a).

Mr. Campbell: Might I suggest, if counsel desires to do that, the document be withdrawn; I have no objection, if the Court has none, of photostatic copies being made of any portion you want. The matter was produced really as a convenience to counsel.

Mr. Eddy, who was on the stand, testified that he had expressed the opinion to the board of directors that he was in the belief that such a deal would possibly violate the terms of that agreement.

So we produced the agreement in order that counsel might see it, and marked it for identification, and I did direct his attention to what I understood were to be some pertinent provisions. That is the situation.

The Court: As I recall, Mr. Campbell, you were of-

(Testimony of Joe Goldstein.)

fering this document really to get into the record just Paragraph 6, Subdivision (a) which appears—

Mr. Campbell: As being the pertinent provisions.
[287]

The Court: Which appears on Page 9, and that you have no desire to include the whole document, unless the respondent insisted on the whole document going in?

Mr. Campbell: Yes.

The Court: Now, Mr. Greaves, have you any objection to simply marking the pages of this document which Mr. Campbell is offering and introducing photostatic copies of those pages into the record?

Mr. Greaves: Well, the only page at this time I know of, your Honor, is this page that Provision 6 and (a) thereunder appear on.

The Court: As I understand it, that is all Mr. Campbell really wants in this record. However, he is willing to offer the whole document, if necessary.

Mr. Greaves: I would be willing to have that page—I believe that is on one page, is it not, sir?

The Court: Paragraph 6 (a) all appears to be on Page 9.

Mr. Campbell: I think that is correct. I have no objection to offering the document as it is.

Mr. Greaves: Simplify it by just photostating that page and having the Petitioners' Exhibit No. 9—

The Court: You would have no objection to offering the photostatic copy of Page 9 of this document?

Mr. Greaves: I would not, your Honor. [288]

The Court: Is that satisfactory with you?

(Testimony of Joe Goldstein.)

Mr. Campbell: May I see that particular page?

The Court: Yes.

Mr. Greaves: On advice from a far sager head than my own, it has been suggested that I might request leave of the Court to read this document in its entirety and determine whether there are other portions material to this case, and leave the record open for a reasonable time in which Mr. Campbell and I can get photostats and submit them to the Court.

Mr. Campbell: I think, as a matter of fact, your Honor, that possibly the entire document should be offered, because that portion standing alone really doesn't indicate what the document purports to cover, that is, the agreement purports to cover.

The Court: I agree with you. You offer the whole document as your Exhibit No. 9?

Mr. Campbell: I will offer the entire document.

The Court: Have you any objection to—

Mr. Greaves: Not at all, if respondent may get a copy.

Mr. Campbell: I was going to suggest, if it be agreeable, that respondent be permitted to take this and to make photostatic copies.

The Court: I think that we will be here all [289] next week and that while we are here you can check that out from the Clerk, Mr. May, and make either photostatic copies of the whole thing or whatever excerpts you want to take from it.

Mr. Greaves: All right.

The Court: Petitioners' Exhibit No. 9 will be received in evidence.

(Testimony of Joe Goldstein.)

(Petitioners' Exhibit No. 9 was received in evidence.)

Mr. Greaves: I wonder if the Court would have the petitioner familiarize himself with the provisions in 6(a) as preliminary to the questions I would like to ask?

The Court: Not at all.

Mr. Greaves: It won't be necessary to read this starting here and ending here aloud, but please familiarize yourself with it.

By Mr. Greaves:

Q. Have you read it? A. Yes.

Q. Would you state whether or not it is provided under Paragraph 6, that is, within that portion of this note agreement, Paragraph 6—

The Court: Of Petitioners' Exhibit 9.

Mr. Greaves: Thank you.

By Mr. Greaves: [290]

Q. Would you state whether or not, set out in Paragraph 6 of Petitioners' Exhibit 9, it is provided that the company which herein is the Boys Markets, Inc. agrees that all notes and interest thereon must have been paid in full—strike it. This is too difficult.

Mr. Campbell: I suggest the document speaks for itself.

Mr. Greaves: Right.

By Mr. Greaves:

Q. With respect to this document, and having familiarized yourself with this document, Mr. Goldstein, I ask you the following question:

Did the Boys Markets ever seek permission from the

(Testimony of Joe Goldstein.)

Provident Mutual Life Insurance Company of Philadelphia to incur a debt of \$35,000.00, to your knowledge?

A. I don't think so.

Q. Additionally, Mr. Goldstein, would there have been, in fact, any reason for your corporation to have incurred a debt of any amount or in any manner because of the purchase of property in Las Vegas during the year 1953?

Mr. Campbell: That is objected to, if the Court please, because it is speculative, in that the corporation incurred no debt. It would also contemplate whatever type of contract speculatively the corporation might enter into. I will stipulate, if it assists counsel, [291] that no permission was sought from the Provident Mutual to enter into a transaction to acquire property for trade purposes in connection with this transaction.

I will also stipulate that the Boys Markets had a sufficient earned surplus at all times to have paid cash for whatever they did.

Mr. Greaves: That is agreeable, your Honor.

The Court: It is so stipulated.

By Mr. Greaves:

Q. I believe on direct examination yesterday, Mr. Goldstein, you testified that you were personally willing to purchase Las Vegas property for the exchange transaction and stand any risk there would be in loss as a result of this transaction, is that correct, sir?

A. Yes.

Q. I wonder if you would tell me what risk you might have contemplated?

(Testimony of Joe Goldstein.)

A. Oh, there was a lot of risks. There is always risk in a deal of that kind. I didn't know how much would have to be paid for it. I didn't know what I would do with it after I bought it; might have had an automobile accident driving to Las Vegas; all kinds of risks.

Q. Were you apprehensive at any time after you entered these escrow agreements, escrow contracts, referred to in this case as Petitioners' Exhibit 8, I believe, were [292] you apprehensive at any time when you became bound to this exchange of properties that you would lose money?

A. When I became bound to it?

Q. Yes.

A. No, I felt wonderful then.

Q. So there was no risk involved?

A. At that time?

Q. Financially?

A. After that time, there was none.

Q. Would you have purchased property in Las Vegas for exchange for more than \$35,000.00?

A. Would I have purchased property for more than \$35,000.00? Yes, sir, emphatically, yes.

Q. This exchange transaction, insofar as definite amounts of money were concerned, did not become definite until June 22, 1953, is that correct, sir?

A. Definite? That's correct.

Q. And is it also correct, sir, that any time before June 22, 1953 this entire deal was very speculative?

A. Yes.

Q. And it could have been terminated by either or

(Testimony of Joe Goldstein.)

both parties at any time prior to the signing of these escrow contracts?

A. Right. Q. I wonder if you could explain, Mr. [293] why the minutes of the board of directors, dated April 28, 1953, state that it has been decided that Joe Goldstein and Lillian Goldstein would buy this land as their private property and that they may at sometime in the future sell it to the Boys Markets? This refers, I believe, Mr. Goldstein, to land that you not only did not own but land that in likelihood you might not ever own, is that not correct?

A. Of course it's correct.

Q. Why was it necessary to provide such a thing as that in your minutes?

A. Oh, everyone has different ways of keeping minutes, I guess, and that was Mr. Eddy's idea. I saw no harm in it.

Q. Let's look now to your corporation's alleged purchase of the San Gabriel property from you and Mrs. Goldstein. A. Yes.

Q. Directing your attention first to the pertinent dates involved in these transactions with and for the San Gabriel property, is it correct that you and Mrs. Goldstein received the deed to the San Gabriel property on or about December 8, 1953? A. Yes.

Q. It is also correct that the alleged sale of this property, this San Gabriel property to your corporation, took [294] place on December 31, 1953?

A. Yes.

Q. How did you receive payment on \$75,000.00, the alleged purchase price?

(Testimony of Joe Goldstein.)

A. I must have got it in the form of a check.

Q. A lot of money. Don't you recall how you got it?

A. To me, in business transactions, I would call that a very, very, very small amount on today's market, and I surely couldn't get anywhere if I recalled amounts like that that long ago, and if you are surprised I am not.

Q. I am not surprised. You can not recall whether you were paid in cash or by check?

A. I tell you one thing. I got the money, if that will help.

The Court: Answer his question, please.

The Witness: I can not recall.

By Mr. Greaves:

Q. But you received payment?

A. Can I re-answer that? I got a little upset there. I recall giving a check.

Q. Do you have with you today the minutes of the board of directors setting for the directors' decision to purchase the San Gabriel property from you and Mrs. Goldstein?

A. You mean this thing, this page here?

Q. There was no meeting in December of 1953?
[295]

A. A meeting in December '53? To purchase the property?

Q. From you and Mrs. Goldstein?

A. There probably was.

Q. Do you have those minutes here?

(Testimony of Joe Goldstein.)

A. I don't know. I don't know whether they are in here or not.

Mr. Greaves: May I ask petitioners' counsel if the minutes for a meeting in which it was decided that the Boys Markets would purchase this property from the petitioners are here?

Mr. Campbell: I have to answer the same thing. I will take a look at the minute book for you.

The Court: The minute book will speak for itself.

Mr. Campbell: I might state for the benefit of counsel the last minutes appearing in this book appear to be the minutes of the stockholders of December 15, 1953, they are the last minutes appearing in this book.

The outside of the book is labeled "Minutes 1936 to 1953." Whether there are any minutes missing here I do not know.

By Mr. Greaves:

Q. Mr. Goldstein, do you know whether a meeting of the board of directors of the Boys Markets, Incorporated was held after you acquired title to this property, in which [296] it was decided that the Boys Markets would purchase this property from you and Mr. Goldstein?

Mr. Campbell: Pardon me. Might I suggest, if the Court please, it appears to me that these are immaterial matters. If the Government is contending that no sale was made, we are not here in court at all. We are involved in no transaction of any kind.

The Court: I think his question may be relevant. I think the witness is qualified to answer. He asked him

(Testimony of Joe Goldstein.)

if he knew. I will overrule it. You didn't put that in the form of a formal objection?

Mr. Campbell: Yes, I did. I intended to, your Honor.

The Court: I will overrule the objection.

The Witness: Did we have a meeting prior to December 31st? Yes.

By Mr. Greaves:

Q. Did you attend that meeting? A. Yes.

Q. Was it decided at that meeting that the Boys Markets should purchase this property from you, this San Gabriel property from you and Mrs. Goldstein?

A. Yes.

Q. Do you know the date of that meeting?

A. No. [297]

Q. Did it occur in December of 1953?

A. Oh, it could have been November, December, right around in there; it is awfully hard to remember exactly when it took place.

Mr. Greaves: Will counsel stipulate that there are no minutes for a meeting?

Mr. Campbell: No, I can not do that. I do not know.

Mr. Greaves: Would counsel stipulate that if there were minutes for a board of directors of the Boys Markets, Inc., in which meeting it was decided to purchase the San Gabriel property from Joe Goldstein and Lillian Goldstein, that such minutes would appear in that minute book?

Mr. Campbell: I can't so stipulate. I don't know, Mr. Greaves.

(Testimony of Joe Goldstein.)

By Mr. Greaves:

Q. You recall a meeting of this nature, do you not?

A. Yes.

Q. Did you vote at the meeting?

A. I don't think it would have been proper for me to vote.

Mr. Campbell: The question is, did you or didn't you?

The Witness: Oh, no. [298]

By Mr. Greaves:

Q. Do you recall who among your directors mentioned the amount of \$75,000.00 as the purchase price?

A. Mr. Eddy.

Q. I believe you testified on direct examination that Mr. Eddy undertook an investigation of the fair market value of the San Gabriel property for the corporation?

A. Right.

Q. Prior to the date that the corporation decided to purchase that property, is that correct?

A. That's correct.

Q. Do you recall the date of this investigation by Mr. Eddy?

A. No, I don't.

Q. Does the corporation have any record of any investigation by Mr. Eddy?

A. I'd have to look at the minutes.

Q. Might I request you to do so during the noon break to ascertain whether you have such minutes?

A. Might be possible. If I can, I will.

Mr. Campbell: Might I suggest, he can examine what is here, of course, but it requires him going to his plant. I don't know if he can—

(Testimony of Joe Goldstein.)

The Witness: I don't know.

Mr. Campbell: How far is your office? [299]

The Witness: Well, I can get out there in time, but I can't get in the vault unless somebody is there that can open it.

The Court: Are you asking whether the minutes or any record in the minutes—

Mr. Greaves: Is present in court today.

Mr. Campbell: I will take your statement on that, Mr. Greaves. You tell me there isn't, I will agree with you.

The Court: Get together and look through the minute book and see if you can find something during your recess.

By Mr. Greaves:

Q. In addition to the figure of \$75,000.00 that Mr. Eddy testified he found from discussions with personnel at the Bank of America, the fair market value of this property, did Mr. Eddy present the directors with any other basis for his view that this property was worth \$75,000.00?

A. Not to my knowledge.

Q. And you were present at that meeting?

A. Yes.

Q. Could I then assume that he did not?

A. Did not.

Q. There was no appraisal of this property prior to the corporation's purchase thereof in 1953?

A. No. [300]

Q. So that certain testimony adduced in this trial is erroneous in that respect?

(Testimony of Joe Goldstein.)

A. I don't know what you mean.

Q. Were you present in court when it was testified that an appraisal had been made by the corporation prior to its purchase of this property?

A. Oh, I'm sorry. I didn't really understand your question.

Prior to the corporation's acquiring it? Well, of course, there was the appraisal made by Mr. Eddy, the Bank of America.

Q. Was this an appraisal?

A. I don't know what you would call it, but if I can try to explain it, Mr. Eddy got in touch with someone, from my understanding, Mr. Eddy got in touch with someone, and someone in the real estate and appraisal department of the Bank of America, and asked them to give him an opinion of what was a fair market price for the property.

Mr. Eddy reported back to the board of directors that he was informed by a person at the Bank of America that \$75,000.00 was a fair market value.

And I agreed to sell it at a fair market value. Does that answer it? I am just getting a little bit tired, and I didn't hear that right.

Q. Did you testify earlier in this case that it was [301] not your corporation's policy to own land?

A. Whether I testified, I don't know. But I can answer that. It is not our policy.

Q. It is not the corporation's policy?

A. That's right.

Q. Do you recall Mr. Eddy testifying to the same effect? A. I believe so.

(Testimony of Joe Goldstein.)

Q. Were you in favor of your corporation's purchasing this property from you, the San Gabriel property?

A. Oh, yes.

Q. How can you justify this, in view of the fact that the policy of the company is against the company's owning land?

A. Well, I'll tell you why. I now own a piece—my wife and I now own a piece of property that we paid \$35,000.00 for. I am now receiving \$800.00 a year rent on a \$35,000.00 investment. Now, how long am I going to keep a \$35,000.00 piece of property with a \$800.00 per year return, which happens to be approximately two and three-quarters percent return.

So, apparently, I wasn't going to keep that property very long. When my first thought is of the Boys Markets, it was offered to them at a fair market price. That happened— [302]

Q. Did you attempt to sell this property to anyone else?

A. Oh, of course not. I would first offer it to the Boys Markets. If I had offered it to anyone else, I am sure I would have received a lot more than \$75,000.00.

Q. With a 42-year lease on this property?

A. You are right. There was no lease, now. I own it. I'm sorry. I said I could have sold the property— You are right.

Q. Thank you. I didn't think you were a lawyer, but I was beginning to wonder.

Was there any purpose for your corporation purchasing this property?

(Testimony of Joe Goldstein.)

A. They thought it would be a good idea.

Q. Would you care to explain in a little more detail what that means?

A. Well, if I was not involved personally, I would have recommended that our company buy it for \$75,000.00.

Q. Even if you weren't involved personally?

A. Definitely.

Q. You did recommend that your corporation—

A. I say I would have, had I not.

Mr. Campbell: The question was why. Why was the corporation buying it? Why was it advantageous to the corporation, as I understood the question. [303]

The Witness: I am sorry. There is lots of reasons. Price was a fair market price. It would be more advantageous for the Boys Markets to own fee than it would to have a forty-some-year lease, for various reasons.

By Mr. Greaves:

Q. If this were true that it was advantageous to the company to own the fee, why was it against the company's policy to own the fees to land?

A. They tried, we tried, the company tried to buy this land on numerous occasions.

Now, I said it is not—I didn't say it is the company's advantage to own—not to own fees or to own fees. I am talking about real estate. There is a lot of difference in owning real estate and having a ground lease.

Q. We are talking about the ownership of real es-

(Testimony of Joe Goldstein.)

tate, which is legally referred to as a fee, one and the same thing.

A. You want to know why it is not advantageous for us to own real estate?

Q. No, I want you to reconcile, as a director of your corporation, how the policy of the corporation can be against owning the fees and yet having—owning property and yet in this transaction finding it advantageous to own the property?

A. Because we are involved in a ground lease at this particular property. [304]

Q. Didn't you state a few moments ago that the reason you wanted to sell this property was that it was a very unfavorable lease to the lessor, and an investment that returned only \$800.00 a year?

A. Yes.

Q. That was very favorable to the lessee, was it not?

A. Oh, in some respects, but in others—they could use that money, they could use future financing when it became necessary and make a lot more money on their money than the return—

Q. Was this the reason for the corporation's purchase of this land? A. Would be my reason.

Q. As a director? A. Yes.

Q. Then why isn't it your company's policy to own land?

A. Because it is more advantageous to use that money that it would take to buy the land, to use it in our corporate activities.

Q. Why wasn't that true in this case?

(Testimony of Joe Goldstein.)

A. Well, I have tried to explain to you to the best of my knowledge, that was it. We do go in sometimes and are compelled to buy land.

Q. Was the corporation— [305]

Mr. Campbell: Did you finish that answer?

The Court: Let him finish his answer.

The Witness: I thought I was finished.

Mr. Campbell: You said you do it sometimes when you are compelled to buy land. I thought you weren't finished.

Mr. Greaves: Has he paused now?

Mr. Campbell: I am sorry.

By Mr. Greaves:

Q. Was your corporation compelled to purchase this property? A. No.

Q. That wasn't the reason in this case, was it? What reason was there for the purchase of this property?

A. Oh, there is numbers of reasons. It would improve their financial structure.

Q. Why isn't the company's policy to own land, then? That would also improve the financial structure?

A. No, it wouldn't.

Q. Is this so unique a lot?

A. No. The minutes will show you that we had two or three hundred thousand dollars of our money tied up in a building.

Q. What minutes?

A. Well, in some minutes. We have proof for that. [306] Here is the reason. We had two or three hundred thousand dollars tied up in a building on this land.

(Testimony of Joe Goldstein.)

Well, we would like to untie that two hundred-some-thousand dollars to use. As long as we are on the ground lease, we can not make that money available.

Does that clear it up?

Q. No, but I will drop it.

Have you and Mrs. Goldstein, either or both of you, sold other property to your corporation?

A. There is one piece that we sold, yes.

Q. In what year?

A. I can't remember the year.

Q. Before or after 1953?

A. Probably was before, must have been before. I know it was.

Q. Is it your testimony that it was before?

A. I am not sure.

Q. You can remember a great deal of detail with respect to other things. Can't you remember more?

A. Like what detail? Like what do I remember?

The Court: Let's not enter into an argument, gentlemen. Ask direct questions. Let's don't comment.

By Mr. Greaves:

Q: Do you recall what property this was?

A. Yes. [307]

Q. Do you recall where it was located?

A. Yes.

Q. Was it located in the greater Los Angeles area?

A. Yes.

Q. Was it property upon which the Boys Market had a building? A. No.

Q. Does the corporation still have that piece of property? A. Yes.

(Testimony of Joe Goldstein.)

Q. Does the corporation still use this piece of property? A. Yes.

Q. For what purpose? A. Parking.

Q. Can you tell us the location of this piece of property? A. It is Highland Park.

Q. Now, at the board of directors' meeting in which you have testified it was decided that the Boys Markets would purchase the San Gabriel property from you and Mrs. Goldstein for \$75,000.00, in that meeting did you inform the other directors that under the lease with the Torley Land Company the corporation still had an unexpired term of 41 years and 10 months? [308]

A. I must have informed them that they had over forty-some years, yes.

Q. Did you tell the other directors that the corporation had the right to use that property as of December 1953 for another 41 years? A. Yes, sir.

Q. And 10 months? A. Yes.

Q. Did you also tell the other directors that the corporation would have only paid rent in the amount of \$32,000.00 during that period?

A. Yes.

Q. And still it was decided by the directors that it should purchase this land for \$75,000.00?

A. Why sure.

Q. Does your corporation still operate a store on that property? A. Yes.

Q. Do you believe you could have sold this property to any other person or corporation for \$75,000.00?

Mr. Campbell: Objected to as immaterial.

(Testimony of Joe Goldstein.)

The Court: I will overrule the objection. He already testified to that.

Mr. Campbell: It is speculative and calling for his conclusion, if the Court please. [309]

The Court: Well, I think there is a question on the fair market value of the property. I think that probably his testimony would be both material and competent.

Mr. Campbell: I understood there was no question.

The Court: Pardon?

Mr. Campbell: I understood there was no question.

The Court: Well, that was what I understood in your opening statement. But I asked a question yesterday, and there seems to be some question of fair market value, both at the time the petitioner bought the property and at the time the corporation bought the property. So I would overrule the objection.

Answer the question.

The Witness: What was the question again, please?

(The question was read.)

The Witness: I don't know.

By Mr. Greaves:

Q. Now, Mr. Goldstein, I have just a few more questions. Referring to Exhibit 1-A in this case, which is yours and Mrs. Goldstein's individual income tax return for the year 1953, a photostatic copy of that, I direct your attention to Page 2 thereof, with particular reference to Schedule F, which is about midway down on the page, which is income from rents and royalties, and under Schedule F [310] I direct your attention to an item of ground rent, \$400.00.

I wonder if you could tell me what this amount

(Testimony of Joe Goldstein.)

was? I wonder if you could tell me the source of that amount. A. Boys' purpose.

Q. For what purpose?

A. For the rental of the land at San Gabriel.

Q. For the rental of the land at San Gabriel?

A. Yes, for the rental of the property.

Q. When did you become the owner of that property?

A. I would have to refer to dates.

Q. December 8, 1953, when the deed was conveyed to you?

A. I don't think that would be the date, or I don't think I would be entitled to \$400.00.

Mr. Campbell: Maybe I can help counsel out. There was a prorate of rents in the escrow, plus the balance of the term. I think I have a copy of the escrow statement here.

I have a copy of the escrow statement, which indicates on prorate rents there was paid to Joe and Lillian Goldstein the amount of \$266.64 and appended also is, received, \$133.36 from Boys Markets for November and December rent; proration having been of the six-month period, 5/1/53 to 11/1/53. Does that answer your question?

Mr. Greaves: Yes, it does; which escrow are you [311] referring to?

Mr. Campbell: I am referring to the escrow statement Escrow No. E 13965. This is not in evidence. This is a statement showing the disposition of funds.

Mr. Greaves: Thank you.

(Testimony of Joe Goldstein.)

Mr. Campbell: Can we stipulate? I will offer to stipulate—

Mr. Greaves: That is perfectly all right.

Mr. Campbell: —that the amount you referred to was from the proration of rents in connection with the acquisition of the property.

Mr. Greaves: Counsel will so stipulate.

Mr. Campbell: It does not appear on the face of those exhibits.

The Court: Yes, I understand.

By Mr. Greaves:

Q. Still looking at Exhibit 1-A, I note that in the capital gain and loss schedule which is attached—do you see that? It is the fourth page, I believe, of that return. Do you have that? A. Yes.

Q. I note that in the capital gain and loss schedule attached, you report an unused capital loss carryover of some \$112,944.77, is that correct?

A. Where is that? [312]

Q. That is on the gains and loss from sales or exchanges of property, Schedule D.

A. Schedule D. What page?

The Court: I don't think it is necessary to ask this witness whether that is correct or not.

Mr. Greaves: I am just trying to ascertain whether he saw what I was referring to.

By Mr. Greaves:

Q. Which \$112,000.00-plus is claimed as an unused capital loss carryover from prior years. Now, I wonder if you could tell me what the source or sources of this loss were?

(Testimony of Joe Goldstein.)

Mr. Campbell: I am going to object as immaterial, if the Court please. That is not in issue here. It has been stated by counsel not to be in issue, and it will take a long time going into this, I have no doubt.

The Court: What is the relevance of this?

Mr. Greaves: I am willing to strike that question, as I didn't realize how much detail it would be. If I may ask a couple of others, the relevance being that I am not sure yet.

The Court: He hasn't questioned the right to the carryover.

Mr. Greaves: I am curious as to the property involved, real property, stocks and bonds. [313]

Mr. Campbell: We can satisfy your curiosity out of court, if you like, but—

Mr. Greaves: Would you stipulate that?

Mr. Campbell: No, I see no materiality to it. I will not stipulate.

The Court: I see no relevance as of now. I will sustain the objection.

By Mr. Greaves:

Q. Did you incur capital loss in 1952?

Mr. Campbell: Objected to as irrelevant, if the Court please.

The Court: What is the object of this line of questioning, Mr. Greaves, as long as the capital loss carryover has not been questioned by the Government? That is my understanding. At least, I haven't seen that it is questioned. It is not a question of how much was used.

Mr. Greaves: Inasmuch as the issue in this case,

(Testimony of Joe Goldstein.)

that is, whether or not the petitioner had ordinary income or capital gain during 1953 on the sale of this property, I am attempting to ascertain whether at the time this entire manipulation came about the latter part of December, the first part of '53, it was motivated by a capital loss from the prior year that was carried over to 1953. This would explain some of the motivation.

The Court: Well, inasmuch as the testimony has [314] been that the original negotiations were started possibly in the latter part of 1952, I will let him answer this question. What you are trying to find out, I gather, is what time this carryover, the loss, the capital loss which gives rise to this carryover occurred?

Mr. Greaves: Yes, your Honor.

The Court: Can you answer that?

The Witness: I can answer it this way: There was no capital loss in '52.

Mr. Campbell: I didn't get that answer.

The Witness: There was no capital loss in 1952.

Mr. Campbell: In other words, it had occurred prior to '52?

The Witness: Yes.

By Mr. Greaves:

Q. During the year 1953 were you in the business of buying and selling real property?

A. I am not in that business.

Q. Were you in the business of constructing markets?
A. In '53?

Q. Yes.

A. I don't remember whether we were building one then or not.

(Testimony of Joe Goldstein.)

Q. I am referring to you personally.

A. Oh, personally, no. [315]

Mr. Greaves: I have just two or three questions here with regard to your brother, Al Goldstein.

By Mr. Greaves:

Q. I believe on direct you stated that he is no longer with the Boys Markets? A. That's right.

Q. Was he with the Boys Markets in 1953?

A. Yes.

Q. Do you recall when he left the employment there?

A. The best I can recollect, it was just about two years ago. That would be 1958.

Q. Did the fact that he wasn't a stockholder in the Boys Markets have anything to do with his leaving?

A. No.

Q. I believe you testified yesterday that all the boys worked quite hard and earned bonuses in the employment of the Boys Markets, and with their money purchased stock from the corporation?

A. Right.

Q. Am I to assume from this that Brother Al didn't work hard and didn't get a bonus?

A. He worked very hard and he got his bonuses.

Q. But he didn't purchase any stock?

A. That's right.

Q. Just one more question: Did you attend the [316] conference alluded to during this trial by others of the witnesses? A. I'm sorry.

Q. Did you attend the conference in Mr. Campbell's office alluded to by other witnesses, referred to?

(Testimony of Joe Goldstein.)

A. Yes.

Q. Did anyone else appearing in this case appear at that conference? A. Yes.

Q. Did you request those individuals to attend?

Mr. Campbell: Just a minute. I am going to object to this. I see no purpose in this. These people are brothers. I will stipulate that I interviewed these people. I asked them to come to my office. I asked them what they knew about the facts of the case, and that is what it amounted to. I object to this as being immaterial and irrelevant.

The Court: I will sustain the objection.

By Mr. Greaves:

Q. As a final question, Mr. Goldstein, do you mean to tell the Court by all of your testimony in this case that you, the president of your corporation, the major stockholder, chairman of the board of directors, and a brother of four of the other directors, were willing to take advantage, not only of your corporation, but also your brothers in making [317] a profit in a transaction at their expense?

Mr. Campbell: I object to that question as argumentative, and an attempt to have the witness characterize his own testimony. The testimony will speak for itself. The question is irrelevant and incompetent, and compound, as well.

The Court: Yes. The question isn't in proper form. I think you have one assumption in it that there has been no evidence on at all, that he was willing to take advantage of the corporation. I will sustain the objection to the question in that form.

Mr. Greaves: I have no further questions at this time, your Honor, except insofar as after a break we can find the minutes of this December meeting or alleged December meeting of 1953, referring to the permission of the board of directors for their corporation to purchase this property from Mr. Goldstein and his wife.

The Court: All right. We will recess at this time until 2:00 o'clock, and I will instruct the parties to look at that minute book and find out whether there are any minutes in there that refer to the purchase price of this property by the corporation from Mr. and Mrs. Goldstein.

We will recess until 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 o'clock, p.m. of the same day.) [318]

Afternoon Session

2:00 p.m.

JOE GOLDSTEIN

a witness called by and on behalf of the Petitioners, having been previously duly sworn, resumed the stand and testified further, as follows:

The Court: Do you have any further questions?

Mr. Campbell: Pardon me. I was going to state, your Honor, that during the recess we made inquiry concerning these minutes. Mr. Goldstein as president was subpoenaed to produce all minutes of the corporation reflecting upon these property transactions. Pursuant to that subpoena, he produced here the minute book of the corporation through the year 1953. I

(Testimony of Joe Goldstein.)

gather that he is now advised that there are no other minutes, or at least none that can be located, other than those which are produced here. Those which are produced here do not include any reference to an authorization by the board of directors for the purchase from Joe and Lillian Goldstein of the San Gabriel property.

Is that a fair statement?

Mr. Greaves: Excepting so far as there is an implication in that statement that such minutes do exist.

Mr. Campbell: Well, that I do not know. I simply asked that they produce all that could be found.

The Court: There will be no such implication on—
[319]

Mr. Campbell: It is not intended to be an implication.

Mr. Greaves: I am just trying to recall the cross-examination of this witness as to one point, your Honor, and I can not recall whether we established one point, and therefore I would like to reopen cross-examination of this witness for one additional question.

The Court: All right.

Mr. Greaves: If I may have a moment to recollect.

Cross-Examination—Continued

By Mr. Greaves:

Q. In your negotiations with the Torley Land Company for the purchase of the San Gabriel property in exchange for property in Las Vegas, the value of which was \$35,000.00, were you in any way compelled to enter that transaction? A. No.

(Testimony of Joe Goldstein.)

Q. Was the Torley Land Company, to your knowledge, in any way compelled to enter that transaction?

A. No.

Mr. Greaves: I think that is all, your Honor.

Mr. Campbell: I have just one matter, your Honor.

The Court: All right. [320]

Redirect Examination

By Mr. Campbell:

Q. Mr. Goldstein, I would like to straighten this out as to when a certain event occurred.

You testified on cross-examination that one time you went out to see the older Mr. Torley regarding the purchase of the property, at which time you had a cashier's check for, I believe, \$35,000.00 with you, and a personal check for \$50,000.00.

Would you state whether that was before or after the original lease, which has been introduced here as Exhibit 2-B, and which was executed in 1945; will you state whether the time you took those checks out there was before or after the execution of that lease?

A. Before.

Q. That was during, I take it, then, the course of negotiations during which I believe you stated that Torley did not desire to sell the property at that time but was willing to lease, is that correct?

A. That's correct.

Mr. Campbell: That is all.

Mr. Greaves: No recross.

The Court: As a matter of fact, I believe you testified that when Torley wouldn't accept these checks that

(Testimony of Joe Goldstein.)

you came out at that time with this lease, is that correct? [321]

The Witness: Oh, no, later, at another meeting.

Mr. Campbell: I wasn't sure whether that was clear or not or could be possibly confused with the later negotiations.

That is all, Mr. Goldstein.

(Witness excused.)

Mr. Campbell: The petitioners will rest, your Honor, subject, I might say, to checking the exhibits to make sure that they have all been offered and received in evidence. I won't take the time to do that at this point.

The Court: Mr. May, do your records indicate that all the exhibits offered have been received in evidence?

The Clerk: That is correct, your Honor, Petitioners' Exhibits numbered 5 through and inclusive of 10. They are in evidence.

Mr. Campbell: Very well. Petitioners will rest, your Honor.

The Court: Mr. Greaves?

Mr. Greaves: With respect to the exhibits, your Honor, I do not recall whether we have these minutes of the board of directors in evidence as exhibits.

Mr. Campbell: No, they are not. They were read into the record, rather than put the entire book into evidence.

Mr. Greaves: Would copies of these two [322] particular board of directors' meeting minutes be helpful to the Court?

The Court: Well, I thought of suggesting that some

time ago. As it turns out, those paragraphs, the one, must have been read into this record at least ten times.

Mr. Greaves: I think if we could have referred to the document without having to read it, it would have been simpler. I wonder now if it would simplify matters for the Court to have these submitted as exhibits?

The Court: No reference has been made to any of the other contents of the minutes of those two meetings. Unless there is some desire on the part of either party to get other parts of those minutes in, I don't think it would make any difference to me one way or the other at this time.

Mr. Greaves: It would be helpful to respondent, your Honor, if these minutes could be introduced, inasmuch as there was testimony as to their form, entered into in this case.

Mr. Campbell: I have no objection—I presume counsel for the Government will have the photostats made?

Mr. Greaves: Will these also be counsel for the Government's exhibits?

Mr. Campbell: Yes, if you like.

The Court: Well, I think that you were offering the minutes, and to save time we were simply reading that [323] small portion into the record. I think they would still be considered your exhibit.

Mr. Campbell: The reason I say that is, photostating with me is a considerable problem, because it depends upon commercial photostaters, and we have an objective, I believe, of having all these exhibits completed and back in the Court's hands before the Court ends its session here, while the Government has photostatic equipment available and available in this building.

The Court: Can you have the minutes of those two meetings photostated?

Mr. Greaves: I can, your Honor. I can not, however, guarantee I can get them back by Friday, administrative process being what it is, and due to the case starting Monday, that is going to involve multitudinous documents—

Mr. Campbell: Possibly we can solve the problem. This is a looseleaf minute book. Perhaps we can extract these two minutes and file them with the Court.

The Court: Yes, they can be returned to the petitioner. So I suggest, if you would like to have those minutes in evidence, that we mark the minutes of the meeting of January 27, 1953 of the board of directors of the corporation as Petitioners' Exhibit 11, and the minutes of the board of directors' meeting of April 28, 1953 as [324] Petitioners' Exhibit 12, and they will be received in evidence.

The Clerk: Petitioners' Exhibits 11 and 12.

Mr. Greaves: No objection.

(Petitioners' Exhibits Nos. 11 and 12 were marked for identification and received in evidence.)

Mr. Campbell: Now the petitioner rests, your Honor.

Mr. Greaves: Would the Clerk please call Mr. Torley?

Whereupon,

RAY E. TORLEY,

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

(Testimony of Ray E. Torley.)

The Clerk: Would you state your name and your address, please?

The Witness: Ray E. Torley, 411 South 13th Street, Las Vegas, Nevada.

The Clerk: Thank you.

Direct Examination

By Mr. Greaves:

Q. Mr. Torley, what is your present occupation?

A. Secretary of the Torley Land Company and handling rentals; we have a number of units in Las Vegas. [325]

Q. How long have you been associated with the Torley Land Company? A. Since 1936.

Q. Do you own stock in this company?

A. That's right.

Q. Are you familiar with either of the petitioners in this case, that is, Joe Goldstein, who appears before you, or his wife, Mrs. Lillian Goldstein?

A. I know Mr. Joe Goldstein.

Q. Prior to your appearance at this court on Thursday, January 21, 1960, had you known any of Mr. Goldstein's brothers?

A. No, I hadn't. I had never met them.

Q. Would you tell us when you met Mr. Goldstein?

A. Mr. Joe Goldstein?

Q. Mr. Joe Goldstein, yes.

A. Oh, I have known Mr. Joe Goldstein since '45, I'd say, '44, '45.

Q. Can you tell us the circumstances under which you met Mr. Goldstein?

(Testimony of Ray E. Torley.)

A. Oh, I knew him through the market business, for one thing, and through the property, Del Mar property.

Q. Pardon me?

A. Through the Del Mar property, Mr. Goldstein wished to lease it, and I knew him through that. [326]

Mr. Greaves: For the record, the Del Mar property, I believe—let me rephrase this.

Mr. Campbell: I will stipulate it is the property that is in issue here.

Mr. Greaves: I wanted the record to be clear.

By Mr. Greaves:

Q. Under what circumstances with respect to this property did you meet Mr. Goldstein, Mr. Joseph Goldstein?

A. Well, like I have mentioned, he wished to lease the property for a market.

Q. Did you negotiate this lease with Mr. Goldstein?

A. I didn't, no, sir. My father and an attorney in Los Angeles handled the matter.

Q. Are you familiar with these negotiations by virtue of your position?

A. Part of it I was, yes, before it was signed. But practically all of the negotiations were handled through Mr. Goldstein and Mr. Eddy and our attorney.

Q. Do you recall the year in which Mr. Goldstein and your father held such negotiations?

A. I'd say it was the latter part of '44, early '45.

Q. I will now show you Exhibit 2-B in this case, Mr. Torley, and ask you if you are familiar with this document? You can just glance at it briefly.

(Testimony of Ray E. Torley.)

A. Yes, sir. That's the 1945 lease of the Del Mar [327] property.

Q. Do you recall the exact date that this lease was executed?

A. No. It was in '45, whatever it mentions here. I don't recall.

Q. Would you state that date, please?

A. 27th of September, it says here. I don't remember the exact date.

Q. And the year?

A. 1945. That's the correct year, I know.

Q. Do you recall by virtue of your position as an officer in the Torley Land Company who initiated negotiations for this lease?

Mr. Campbell: Objected to as calling for hearsay on his part. He stated that he had no part of the negotiations.

The Court: Well, I think the question may be repetitious, but he is asking him whether he knows who initiated it in behalf of the Torley Land Company, is that it?

Mr. Greaves: Yes.

The Court: I will overrule the objection.

The Witness: I am sorry. I don't recall. I think it was between Mr. Goldstein and my father, but I couldn't say, truthfully.

The Court: The portion of the answer as to what he thinks is not responsive and will be stricken. He said [328] he didn't know.

By Mr. Greaves:

Q. As an officer in the Torley Land Company, do

(Testimony of Ray E. Torley.)

you know whether Mr. Joe Goldstein offered to purchase this San Gabriel Del Mar property?

A. You mean after the lease was signed?

Q. Well, first, after the lease was signed?

A. He had made an attempt to buy it, yes.

Q. Prior to the time the lease was signed?

A. No.

Q. You do not know of any such?

A. No, he never made any attempt, to my knowledge to buy it.

Q. As an officer of your corporation, do you know why his lease did not contain a renegotiation clause?

A. No.

Mr. Campbell: Objected to as immaterial, your Honor. We have the lease. The lease was entered into. Why it did or did not contain provisions of that kind, I submit, is immaterial to the issues before this Court. Also, calls for the conclusion of this witness, who did not participate, according to his testimony, in the negotiations.

The Court: I think that the testimony might be material, but I doubt if this witness is going to be able to answer it, in view of his previous testimony, unless later [329] he became aware of why such clauses were not put in there.

Can you answer the question?

The Witness: No, I'm sorry. The lease, as I mentioned before, was drawn up by our attorney, and he handled the whole matter.

By Mr. Greaves:

(Testimony of Ray E. Torley.)

Q. What did this lease cover, specifically, was this an improved parcel of real estate?

A. It was unimproved.

Q. Was there any building at all on this property?

A. As I recall, there was an old house which was torn down, and a small restaurant, just a little eating place, probably five or six stools.

Q. Do you recall when these buildings were torn down?

A. No, I don't remember the exact date. It was prior to the time they started their market; whatever the date in there—

Q. Subsequent to the date of the lease?

A. Yes. It was after the date of the lease.

Q. Do you know whether the Boys Market occupied either of those buildings?

A. No, they didn't.

Q. Do you recall when the improvement erected on this property—

A. I don't remember the exact date. [330]

Q. Do you recall the year?

A. No, I don't.

Q. During the period the Boys Markets, the limited partnership, was the lessee of the property, did you as an officer of the Torley Land Company have occasion to discuss the matter of this lease with anybody representing the Boys Markets?

A. In what regard?

Q. In any regard.

A. Not to my knowledge.

(Testimony of Ray E. Torley.)

Q. You did not discuss this lease with anyone representing the Boys Markets? A. No.

Q. Did you discuss this lease with anyone representing the Boys Markets, a corporation?

A. No, not the lease.

Q. You have never had any discussion. Have you had other discussions with members of the directors of the corporation or partners in the limited partnership?

A. It is the only one I mentioned in regard to the sale of the property, Mr. Goldstein.

Q. He is the only one representing, or the only one from these companies that you have had contact with?

A. In regard to the lease, that's correct.

Q. As an officer of the Torley Land Company, did [331] you have any objection to the assignment of the lease from the Boys Markets, the limited partnership, to the Boys Markets, Incorporated?

A. No.

Q. At the time you learned of this lease assignment, did you as an officer of your company have any concern that there might be defaults?

A. No. As I recall it, I turned that over to my attorney, also, and he handled it.

Q. In any discussions you had with Mr. Goldstein prior to the time he purchased this property from the Torley Land Company, did he ever discuss the possibility of his corporation purchasing this property?

A. Well, as I recall it, it was always that, "We'd like to buy the property," which I presumed was the corporation. I didn't know. It might be the cor-

(Testimony of Ray E. Torley.)

poration or he and his wife or who it would be—it was, “We need the property.”

Q. Do you recall when negotiations were commenced for the exchange of this San Gabriel property and a property in Las Vegas?

A. In '53, about in June of '53, as I recall it.

Q. That is the time that the escrow agreements were signed? A. That's right. [332]

Q. Now, were there negotiations preceding the execution of those agreements?

A. Well, not to my knowledge, no.

Q. Your father conducted those negotiations, as well? A. Well, I couldn't say on that.

Q. You have no present recollection?

A. No, I don't have any.

Q. Do you know who initiated the idea of an exchange of properties?

Mr. Campbell: Objected to as calling for hearsay upon his part, if the Court please.

The Court: Ask him first if he knows. He can answer that.

The Witness: Well, I don't know, to be positive. If Mr. Goldstein talked to my dad on it, so—

The Court: Do you know?

The Witness: No, no, I don't.

By Mr. Greaves:

Q. You stated a few moments ago that Mr. Goldstein did make an offer or offers to purchase this property from the Torley Land Company, is that correct?

A. That's correct.

(Testimony of Ray E. Torley.)

Q. And this, I believe you further testified, was after the date of the execution of this lease?

A. That's right. [333]

Q. Exhibit 2-B. Did you have any part in determining whether Torley Land Company should or should not accept these offers of purchase made by Mr. Goldstein? A. I did.

Q. Did you have any conversation with Mr. Goldstein relative to these offers of purchase?

A. Well, it was really only one, one time he wanted to buy it, and I quoted him a price, and he thought it was too high, and that's as far as we got on it.

Q. Can you recall the approximate date?

A. I don't recall it.

Q. Do you recall the year?

A. I would say it was about in '47, but I am not positive about that, possibly '46 or '47.

Q. To your knowledge, after that time—

A. It was after the lease, yes.

Q. From your knowledge, after that date, that is, approximately 1947 and up to 1953, no further offers were made to the Torley Land Company by Joe Goldstein? A. Not to me, no, sir.

Q. At the time that Mr. Goldstein made an offer to you for the purchase of this property, did he give any indication of why he wanted this property?

Mr. Campbell: If the Court please, I am confused. Are we talking about 1947 now? [334]

Mr. Greaves: As to an offer made in 1947, yes, sir, approximately 1947.

The Witness: Well, to the best of my recollection,

(Testimony of Ray E. Torley.)

Mr. Goldstein told me he wanted the property for loan purposes, that they could borrow more money if they owned the land. That's all I have a recollection of.

By Mr. Greaves:

Q. Do you recall what offer he made to you at that time?

A. No, he didn't make any offer at that time.

Q. No dollar amount? A. No.

Q. Did you ask a price for the property?

A. Yes.

Q. Do you recall the approximate amount of that?

A. I asked \$40,000.00.

Q. \$40,000.00. This was in approximately 1947?

A. Around that, yes.

Q. Between this date in 1947, at which time you asked \$40,000.00 for the San Gabriel property, and the time your company exchanged properties with Mr. Goldstein, had your company attempted to sell this property to other parties? A. No, sir.

Q. Did your corporation consider this a desirable lease? [335]

Mr. Campbell: Objected to as immaterial, what they considered it to be, if the Court please. We are faced with the lease as it existed.

The Court: I don't see much materiality. However, I will let him answer the question.

The Witness: What was the question, again?

By Mr. Greaves:

Q. Did you consider the lease under which the Boys Markets held the San Gabriel property a desirable lease?

(Testimony of Ray E. Torley.)

A. When do you mean, in '45 or later on?

Q. Well, I would suggest that if the view had changed that you so state.

A. When the lease was written, we thought it was a good one; '53 it wasn't. The dollar value wasn't there and the lease was a 50-year lease, so \$800.00 a year wasn't very much income.

Q. In '47 did you consider this a good lease?

A. Not very, no.

Q. For the period '50 to '53 it declined?

A. We figured it had.

Q. In its merits and benefits, as far as the Torley Land Company was concerned?

A. That's right.

Q. Can you tell us, then, why your company did not attempt to sell this property? [336]

Mr. Campbell: Objected to, if the Court please, as immaterial and irrelevant, insofar as the issues here are concerned.

The Court: I will overrule the objection.

The Witness: Well, the reason is, on a 50-year lease with an \$800.00 income it is impossible to sell it for \$40,000.00. The returns weren't enough, for \$40,000.00.

By Mr. Greaves:

Q. So you didn't even attempt to sell it?

A. No.

Q. Did you state that all the negotiations with respect to the sale of this property were held between Mr. Goldstein and your father, insofar as you know?

(Testimony of Ray E. Torley.)

A. As far as I know, it was held between Father and Mr. Goldstein, and Father talked to me on it.

Q. But you had no personal dealings?

A. I don't recall having any.

Q. With Mr. Goldstein?

A. I don't recall having any personal with him, no.

Q. Did the Torley Land Company desire to rid itself of the San Gabriel property?

A. For income purposes, yes.

Q. Would you care to explain that?

A. Well, as I said, it was an investment we figured was worth \$40,000.00, and \$800.00 wasn't enough to talk about [337] over a period of 50 years. If that could be invested in other rental property, it could be a bigger income.

Q. Did Torley Land Company desire to have rental property in Las Vegas? A. That's right.

Q. Would Torley Land Company have accepted rental property in any other community?

A. I couldn't say on that.

Q. You are a director of the Torley Land Company?

A. Yes, but I wouldn't know. It all depends on what the property was.

Q. Would you as a director of your company have refused an offer of an exchange of property in some other location?

Mr. Campbell: I am going to object. That is speculative, because it includes many things. Even though you wanted your property in one place, if you had a

(Testimony of Ray E. Torley.)

tremendously attractive offer, wherever it might be, you might accept it.

The Court: I sustain that. He said before it would depend on the circumstances at the particular time, and the place, and everything else.

By Mr. Greaves:

Q. In 1953 where was your residence?

A. 1953? Alhambra, California. [338]

Q. Where was your father's residence?

A. Las Vegas.

Q. To your knowledge, was your father interested in getting property, receiving or purchasing or exchanging, in any manner, getting property in Las Vegas?

A. No, not to my knowledge, he wasn't too interested in it.

Q. Was your father active in the business in 1953?

A. He was 75 then, and he hadn't been active since '35.

Q. Yet he conducted all the negotiations for this property?

A. He talked, yes. He met Mr. Goldstein more than I did and then spoke to me about it.

Q. I wonder if you could speak up just a little bit.

A. He had met Mr. Goldstein considerably more than I had and knew him better.

Q. Why was that?

A. Well, maybe we shouldn't bring it up in here, but he met him at the races quite a few times. Dad liked the races and consequently they met.

Q. As a director of your corporation, were you

(Testimony of Ray E. Torley.)

interested in exchanging your San Gabriel property for tax advantages?

A. No, not for tax advantages, it wouldn't mean [339] anything to us.

Q. And your corporation then in exchanging properties was merely desirous of getting rid of a piece of property that no longer justified the investment by virtue of its income?

Mr. Campbell: Object to that question as calling for his conclusion, because it refers to what the corporation desired. I think this witness can only speak as to his own intentions or desires at that time.

The Court: I believe he has testified he was an officer and director of the corporation.

Mr. Campbell: As an officer and director, he can state, I believe, your Honor, what his own intentions or desires were, but he can not speak for the other officers or directors of the corporation.

The Court: All right. Limit it to his own thoughts as an officer and director of the corporation.

Mr. Greaves: May I direct some preliminary questions to this witness?

The Court: Yes.

By Mr. Greaves:

Q. You say your father retired, to all intents and purposes, in 1935?

A. That's in the market business, yes. We were in the grocery business. [340]

Q. But he was still active, or, rather, he was still active in '53 insofar as the Torley Land Company's real estate interests were concerned?

(Testimony of Ray E. Torley.)

A. That's correct.

Q. Was your father also a member of the board of directors? A. Yes.

Q. And a stockholder? A. That's right.

Q. Were there other members of the board of directors and stockholders?

A. There is one other member but he is not a stockholder.

Q. There were three directors and two stockholders? A. That's right.

Q. As a director of your corporation, were you interested in gaining any tax advantage for your corporation in this exchange of San Gabriel property for the Las Vegas property?

A. Well, as I mentioned before, I was interested in the extra income, and if there was any tax angle to it I was interested in trading it.

Q. So that the fact that this would or would not have been a tax-free exchange would have made no difference to you, as a director of your corporation?
[341]

A. I wouldn't say that, no. If you can save the tax, why, in an even trade, and get a larger income, why, we would be interested. If we would have had to pay a tax on it, we probably wouldn't have sold it.

Mr. Campbell: May I have the answer, please?

(The answer was read.)

The Witness: That's on a gain, I mean.

By Mr. Greaves:

Q. Did your corporation's board of directors have

(Testimony of Ray E. Torley.)

any meetings with respect to the exchange of properties? A. Yes, we had one.

Q. You say you had one? A. Yes.

Q. Did you attend that meeting?

A. Yes, I did.

Q. Was the matter of this exchange discussed at that meeting?

A. Yes. As I recall, that was in November '53, and it was discussed about exchanging the properties.

Q. In what month? A. In November '53.

Q. As a matter of the board of directors of your corporation, when did you first learn that the exchange of properties would result in your receiving land and improvement in Las Vegas worth \$35,000.00? [342]

A. Well, that's when we went to escrow, in June of '53. That was put in escrow.

Q. You stated earlier that you had asked Mr. Goldstein for \$40,000.00 for the San Gabriel property?

A. We had at one time, yes.

Q. At a prior time? A. Prior to that, yes.

Q. At the time you learned that you were exchanging your San Gabriel property for other property in Las Vegas worth \$35,000.00, what was your reaction?

Mr. Campbell: Objected to as immaterial and irrelevant, if the court please.

The Court: It may be material, have some relevance. I will overrule the objection.

The Witness: What was that question, again?

Mr. Greaves: Would you read the question?

(The question was read.)

(Testimony of Ray E. Torley.)

The Witness: Well, as I mentioned, I thought it was a good deal for the extra income.

By Mr. Greaves:

Q. As a director of your corporation, you thought that \$35,000.00 was a reasonable price for this property? A. That's right.

Q. Was this view of yours based in any part upon the fact it was a 42-year lease on this property at that time? [343]

Mr. Campbell: I am going to object to leading and suggestive questions.

The Court: Yes, that is quite leading.

Mr. Campbell: Having done the same to me.

The Court: Sustain the objection to that question.

By Mr. Greaves:

Q. What effect do you believe the lease on that property had on its value? A. What is that?

Q. What effect do you believe that the lease existing on the San Gabriel property had on its value?

A. For the period of the loss I think it hurt it.

Q. In 1953 how long a period under this lease remained? A. Forty-two years to go.

Q. And there was no re-negotiation clause in this lease?

A. I don't believe so. I couldn't say without reading it.

Mr. Greaves: I wonder if I might have Petitioners' Exhibit 8, which are the three escrow agreements?

By Mr. Greaves:

Q. Mr. Torley, I now show you Petitioners' Exhibit 8, which is in evidence in this case, and ask you

(Testimony of Ray E. Torley.)

if you are in any wise familiar with these, in your corporate capacity? [344]

A. Yes, I am.

Q. And are these the documents that represent the transaction in which the Torley Land Company exchanged the San Gabriel property for a Las Vegas property? A. They are.

Q. Do you recall when these escrows were entered? A. June of '53.

Q. Do you recall when these escrows were closed?

A. Closed, I believe, in August.

Q. I beg your pardon?

A. I believe it was in August. I am not positive.

Mr. Campbell: If the Court please, I don't think there is any issue. The records here show it was closed as of December 8th, when the title was passed, as shown by the policy of Title Insurance. If we have no issue—

The Court: Yes, that is my understanding of it.

Mr. Campbell: I think possibly we are asking the witness for something he couldn't recall but which the documents here show.

By Mr. Greaves:

Q. Do you have any knowledge when Mr. and Mrs. Goldstein purchased the property in Las Vegas?

A. June, I believe. I am not positive about that now. I wouldn't want to say for sure.

Q. The escrows were opened in June of 1953 and closed [345] in December of 1953. To your knowledge, did the Torley Land Company receive rent under the lease during that period on the San Gabriel property?

(Testimony of Ray E. Torley.)

A. I am not sure about that. I believe at the time the escrow was signed the rent stopped, but I am not positive.

Q. Did you know that on December 31st the Goldsteins sold this property to their corporation for \$75,000.00? A. No. I did not.

Q. To your knowledge, had your father ever re-neged on a business deal with Joe Goldstein?

A. Not that I know of.

Mr. Greaves: I believe that is all, on direct.

Mr. Campbell: Just one or two questions, if the Court please.

Cross-Examination

By Mr. Campbell:

Q. Mr. Torley, as a matter of fact, your father is still active, is he not?

A. In what respect? In the corporation, you mean?

Q. He is still active in the management of his business affairs? A. Oh, yes, that's right.

Q. Even at his advanced age? A. Yes.

Q. And I take it when you say "retired" you mean [346] he retired from the active retail grocery business? A. That's correct.

Q. Now, with regard to this corporation, the Torley Land Company, what proportion of the stock of that corporation was owned by your father in 1945 and in 1953?

A. I couldn't say that without looking it up.

Q. Did he own more than half of the shares?

A. I believe he did at that time, yes.

(Testimony of Ray E. Torley.)

Q. Do you recall what your ownership was?

A. I think I had about 45 percent, if I recall.

Q. And the balance was in your father?

A. That's right.

Q. And, as a matter of fact, this is true, is it not, that your father during 1945 conducted all of the negotiations relative to the sale of land or the acquisition of the other land?

A. I think part of it was in '45, yes.

Q. And it is true, is it not, that in regard to this transaction had in 1953 all of the negotiations right up to the time that you signed the escrow instructions were carried on by your father?

A. That's correct.

Q. And you signed the escrow instructions, did you not, by reason of the fact that the escrow was held in California and you were living in California at that time? [347]

A. Yes. We put them in the bank in Ontario.

Q. Close to your residence? A. That's right.

Q. As a matter of convenience, was it not? Now, referring back to the fact that in 1947 as to the one negotiation that you had with Mr. Goldstein, where you set up a price of \$40,000.00, was that a firm offer that you made?

A. Well, as I recall that, Dad and I were playing golf down at Montebello—

Q. Can't you answer the question "Yes" or "No," whether it was a firm offer or was not a firm offer?

A. I told him we wanted \$40,000.00 for the property.

(Testimony of Ray E. Torley.)

Q. Was that a firm offer?

A. It was there; if he'd have given the forty, we would have went to escrow on it.

Mr. Greaves: I believe he has answered that question. Why badger him?

Mr. Campbell: I am not attempting to badger him.

The Court: That is cross-examination. I don't think he is badgering him anyway.

Mr. Campbell: I think Mr. Torley can take care of himself.

By Mr. Campbell:

Q. Incidentally, at the time of this exchange of properties, what was the basis of the property in San Gabriel [348] on your books?

A. Well, I have the correct figure on that right here, rather than guess at it. If you would like to enter this—

Q. Yes.

A. I have a letter from my auditor here. \$10,422.00, that was on the books.

Q. And at what date, how long had that been the cost basis?

A. We obtained the property in about '37, as close as I can recall.

Q. Was that \$10,400.00 a depreciated figure or was that the cost?

A. No, that was land, that was what it cost us.

Q. In other words, you did not ever consider it as the purchase of an improved property, I take it?

A. No.

(Testimony of Ray E. Torley.)

Q. And that was the cost in the beginning and the cost you carried right on through in your books?

A. Yes.

Q. So that the apartment house which you are now carrying on your books, which you obtained in this exchange, I take it, you are also carrying at a cost basis before depreciation?

A. That's right, same figure. We are carrying the [349] building at eight thousand, three hundred and the land at two thousand. So it is the same figure.

Mr. Campbell: That is all.

The Court: Redirect?

Mr. Greaves: No, your Honor.

The Court: Thank you, Mr. Torley. You are excused.

(Witness excused.)

The Court: Is there any need to hold this witness?

Mr. Campbell: No, sir.

Mr. Greaves: No. I believe, your Honor, we can conclude at this time.

The Court: The respondent rests?

Mr. Greaves: Yes.

Mr. Campbell: We have no rebuttal.

The Court: All right, gentlemen, the case then will be submitted. Have you any desire to argue it orally at this time?

Mr. Greaves: I have no such desire, sir.

Mr. Campbell: If your Honor is going to take it on briefs, I can see no purpose to argue at this time. It should be better stated in the briefs, I think.

The Court: All right. What is your preference as

to whether the briefs be filed simultaneously or seriatim? [350]

Mr. Campbell: I would prefer simultaneous briefs, your Honor.

Mr. Greaves: Well, I would prefer seriatim briefs.

Mr. Campbell: That is par for the course on both of us.

The Court: Well, inasmuch as this is pretty much of a factual case, I think I will make them seriatim, unless there is some good strong reason that—

Mr. Campbell: No, your Honor, except for the fact that, which I don't anticipate, the decision is against the taxpayer, the matter of interest, of course, is running on at a substantial amount.

The Court: Well, we will make the briefs be filed seriatim.

Petitioners' original brief—how much time do you think you will need?

Mr. Campbell: It will require 15 days for the reporter's transcript. Sixty days, your Honor.

The Court: Petitioners' original brief will be due in 60 days from now, which will be—

The Clerk: March 22nd, your Honor.

The Court: March 22nd. How much time do you want for your answering brief?

Mr. Greaves: I can see our reply brief is going [351] to come at a very inopportune time. We have calendars both in March and April. I would say the customary amount of time for reply, your Honor, whatever you feel that should be.

The Court: Normally, we would give 30 days for answering brief.

Mr. Greaves: That is sufficient.

The Court: Is that sufficient?

Mr. Greaves: Yes.

Mr. Campbell: I might state this, your Honor: Falling on March 22nd, I would have to do it prior to that time, because I am commencing a long trial on March 8th here in this courthouse, which will take a long time to try, so that if I may have that time, if the Government's brief is to follow mine by 30 days—but if it is to extend beyond, whether I get mine ahead of time or not—

The Court: I think we would probably have to give the Government a date certain, which would normally be 30 days after March 22nd.

Mr. Campbell: Then will your Honor move my time up to March 8th?

The Court: All right. We will change the Petitioners' original brief then to be due on March 8th; respondent's answering brief will be due 30 days thereafter.

The Clerk: April 7, your Honor. [352]

The Court: April 7th.

Mr. Campbell: May I have 15 days?

The Court: Fifteen days for the reply brief.

The Clerk: April 22nd, your Honor.

The Court: 22nd.

The Clerk: That will be 15 days.

The Court: All right, gentlemen, if there is nothing further, then, the case will be submitted.

(Whereupon, at 3:00 o'clock, p.m., Friday, January 22, 1960, the hearing in the above-entitled matter was closed.) [353]

JOINT EXHIBIT 2-B

LEASE

This Indenture of Lease, made this 27th day of September, 1945, by and between Torley Land Company, a corporation, hereinafter designated as Lessor, and The Boys' Market, a Limited Copartnership, consisting of Joe Goldstein, General Partner, and Edward Goldstein, and Joe Goldstein as Trustee for Max Goldstein, Limited Partners,

* * * * *

21. Nothing in this indenture contained shall be construed to prevent the Lessee from encumbering its leasehold interest by mortgage, pledge or trust deed; but the rights of any mortgagees, pledgee, trustee, bondholder or beneficiary, shall at all times be subject to the rights of the Lessor to exercise any of the rights, options or remedies in this lease or by law provided, including the right to terminate this lease in case of default as herein provided, and shall in no wise alter, affect or diminish the reversionary interest of the Lessor herein. And no act of the Lessee hereunder shall in any wise encumber the Lessor's title or reversionary interest hereunder.

* * * * *

PETITIONERS' EXHIBIT 9

NOTE AGREEMENT

Oct.

This Agreement dated as of ~~September~~ 1, 1950, by and between The Boys' Market, Inc., a California corporation (hereinafter sometimes called the "Company"), as Borrower, and Provident Mutual Life Insurance Company of Philadelphia, a Pennsylvania corporation, (hereinafter sometimes called "Provident"), as Lender, Witnesseth That:

1. Amount and Terms of Loan. The Company agrees to borrow from Provident and Provident agrees to lend to the Company, upon the terms and conditions hereinafter set forth, the sum of \$400,000. The loan shall be evidenced by ten (10) promissory notes (hereinafter sometimes called the "Notes") of the Company in the principal amount of \$40,000 each, dated

Oct.

Oct.

~~September~~ 1, 1950 and maturing serially on ~~September~~

Oct.

1 of each year beginning ~~September~~ 1, 1951, to and in-

Oct.

cluding ~~September~~ 1, 1960, and bearing interest from

Oct.

~~September~~ 1, 1950 at the rate of four per cent. (4%) per annum payable semi-annually, the first such interest

Apr.

payment to be made on ~~March~~ 1, 1951. Each Note shall be payable as to principal and interest and premium in

such coin or currency of the United States of America as at the time of payment is legal tender for public and private debts, shall be subject to repayment as provided herein, shall be issued under and subject to the terms and conditions of this Agreement, and shall be substantially in the form attached hereto as Exhibit "A."

2. Security for Notes. As security for the payment of the principal, interest and premium, if any, of the Notes, the Company will at the time of the delivery of the Notes (herein called the "Closing") deliver to Provident a Mortgage (hereinafter called the "Mortgage") naming Provident as mortgagee and in substantially the form of mortgage hereto attached marked Exhibit "B", which Mortgage shall at the time of Closing be a lien upon all real estate and fixed property included in the Company's office and store property at 5531 Monte Vista Boulevard, Los Angeles, California, and upon the Company's leasehold interest in premises 120 East Valley Boulevard, Los Angeles, California, subject to no prior liens or encumbrances upon the Company's interest except, in the case of the property on Monte Vista Boulevard, the lien of the Deed of Trust referred to in paragraph 6(b) hereof. The Mortgage shall be held by Provident as custodian for the holders of the Notes as their interest may appear. The lien of the Mortgage shall be released at the earliest date when both (a) the unpaid principal amount of the Notes is less than \$250,000 and (b)

the Company is not in default under any provision of this Agreement.

* * * * *

6. Negative Covenants of the Company. The Company covenants and agrees that until such time as all of the Notes and interest thereon have been paid in full the Company will not, without the written consent of the holders of 75% of the Notes at the time outstanding, do any of the following:

(a) Create, assume, incur or in any manner be or become liable, directly or indirectly, for any indebtedness to any person or persons for money borrowed, other than (i) the Notes, (ii) secured indebtedness not violating subparagraph (b) or subparagraph (c) hereof, and (iii) unsecured bank loans maturing in less than one year provided that (x) the aggregate of all such bank loans at any one time outstanding shall not exceed \$200,000 increased to \$400,000 by amendment of 8-26-55 and (y) for thirty (30) consecutive days in each fiscal year no such bank loans shall be outstanding.

Admitted in Evidence Jan. 22, 1960.

PETITIONERS' EXHIBIT 12.

MINUTES

Regular Meeting
Board of Directors
of
The Boy's Market, Inc.

Held on April 28, 1953, at 2:00 P.M. at 5531 Monte Vista Street, Los Angeles, California.

Present: Joe Goldstein, Edward Goldstein, Max Goldstein, Albert Goldstein, Bernard Goldstein, Lillian Goldstein, and Everett L. Eddy.

The meeting was called to order by President, Joe Goldstein.

Minutes of previous meeting read and approved. The President asked for a discussion of business for the first quarter of 1953. The Treasurer reported that the net profit for the quarter had been \$33,851.49. This was a little disappointing but the gross profit was about one and a half percent less than ordinarily. However, it was anticipated that profits remaining during the three quarters of the year would be somewhat higher and the Treasurer estimated that the net profit for the year before income taxes should be about \$300,000.

The President then reported that the plans for the remodeling and widening of the Highland Park Market were nearing completion, and that negotiations for a loan had been opened up with the John M. C. Marble Company, who are local agents for Provident Mutual

Life Insurance Company, and a loan is being asked for in the sum of \$150,000.00. Out of this \$150,000.00, proceeds from the loan, the present indebtedness on the property in Highland Park would be paid, which would leave approximately \$130,000 to \$135,000 available to cover the cost of remodeling and a portion of the cost of the fixtures.

The Treasurer reported that the \$200,000.00 bank loan which was owing at the first of the year, had been paid, and that at this time there were no commercial loans owing by this company.

At a previous meeting, there was a discussion about the possibility of purchasing the land on which the San Gabriel Market was located. It has now been decided that Joe Goldstein and Lillian Goldstein would buy this land as their private property, and they may at some time in the future, sell it to The Boy's Market.

There being no further business to come before the board, it was then moved, seconded, and carried that the meeting be adjourned.

JOE GOLDSTEIN,
President

Attest:
EVERETT L. EDDY
Secretary.

Admitted in Evidence Jan. 22, 1960.

[Endorsed]: No. 17318. United States Court of Appeals for the Ninth Circuit. Joe Goldstein and Lillian Goldstein, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of Record. Petition to Review a Decision of the Tax Court of the United States.

Filed: March 28, 1961.

Docketed: April 8, 1961.

/s/ FRANK H. SCHMID,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

JOE GOLDSTEIN and LILLIAN GOLDSTEIN,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS UPON WHICH
APPELLANTS INTEND TO RELY

Appellants, Joe Goldstein and Lillian Goldstein, hereby state that the points upon which they intend to rely on the appeal in this action are as follows:

(1) The Findings of Fact, Conclusions of Law and Decision of the Tax Court of the United States are not supported by the evidence.

(2) The Decision of the Tax Court of the United States is contrary to law.

(3) Errors occurred at the trial in the admission and rejection of evidence.

Dated at Los Angeles, California, this 29 day of March, 1961.

WALTER M. CAMPBELL

668 S. Bonnie Brae Street
Los Angeles 57, California
Attorney for Appellants and
Petitioners

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Mar. 31, 1961. Frank H. Schmid,
Clerk.